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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Hon. G. Thomas Cooper, Jr.

RECEIVED
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SC Court of Appeals

Case No. 2015-CP-40-04376
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

EX PARTE: Robert J. Thomas and Rogers Townsend & Thomas, PC,.....Appellants

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,.....Petitioner

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,.....Respondent

Of whom Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal and as the Daughter of Mary Beth Sjoberg is .....Respondent

JOINT MOTION TO DISMISS APPEAL AND TO VACATE ORDERS

Appellants and Respondent jointly move the Court to dismiss this appeal and to vacate the Orders of the Probate Court and of the Circuit Court without costs. This motion is made because the case has been settled and because the lower courts' orders sanctioning Robert J. Thomas and his law firm would be vulnerable to reversal on appeal and would impugn the fine reputation of Mr. Thomas and his law firm. Specifically, Mr. Thomas and his firm raised substantial jurisdictional defenses to the Probate Court's Orders, and Respondent recognizes the

substantial risk that the Probate Orders would be reversed if this appeal were allowed to proceed. All parties desire that this matter come to an end.

This motion is based on the following grounds[1]:

Mr. Thomas and his law firm (Rogers Townsend & Thomas, PC, collectively, "Rogers Townsend" and sometimes "Appellants") represented Mary Beth Sjoberg in her various estate planning activities for several years. On April 18, 2011, Ms. Sjoberg's daughter, Paula Saine, had a telephone conversation with one of her mother's physicians and relayed to him that her mother had said she had changed her Will to leave all of her assets to a particular charity. (R. p. 697). Ms. Sjoberg became concerned about her daughter's treatment of her and told Mr. Thomas so. Mr. Thomas began asking to discuss Ms. Sjoberg's situation with Ms. Sjoberg's adult daughter, Paula Saine. (R. p. 633).

Ms. Saine got counsel involved, and her counsel reported to Mr. Thomas that she had drafted some papers for Ms. Sjoberg. (R. p. 633). Counsel was about to file those papers, she said, and Mr. Thomas offered to pick them up from her. (R. p. 633). Instead of letting Mr. Thomas pick up the papers (they were summonses and petitions to have a conservator and guardian appointed for Ms. Sjoberg), counsel filed them with the Probate Court and had Ms. Saine (the Plaintiff herself) accept service of them on behalf of Ms. Sjoberg (the Defendant).

Let us stop here and emphasize that a daughter sued her mother, and the daughter accepted service of the papers for her mother.

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1 All references are to the Record on Appeal as prepared for the Circuit Court and as supplemented with filings from the Circuit Court itself (which filings are designated as "ROA 711 *et seq.*).

In fact, no affidavit of service of the summonses and petitions on Ms. Sjoberg was ever filed with the Probate Court, and indeed Ms. Sjoberg was never personally served with those papers.

Neither Ms. Sjoberg nor Mr. Thomas was notified of the filing of these summonses and petitions, and they would only learn about them much later in the proceedings.

So, without Ms. Sjoberg being afforded a minimum of due process, on May 12, 2011, the Probate Court entered orders finding that Ms. Sjoberg was incapacitated and appointing Ms. Saine as temporary guardian and temporary conservator for Ms. Sjoberg. The Probate Court then purported to appoint Annie Bea Hightower ("Attorney Hightower") as guardian ad litem for Ms. Sjoberg.

A hearing on the Petitions was held on May 9, 2011. (R. pp. 1, 4). Because Ms. Sjoberg was never served with either of the summonses or petitions, and because she was never given notice of the hearing, she did not attend the hearing. (R. p. 4).

In its appointment order, the Court found that Ms. Sjoberg was unable to manage her own affairs. Only after the Probate Court appointed Ms. Saine as temporary guardian and conservator for her mother did Mr. Thomas learn of the lawsuit.

Attorney Pope D. Johnson, III made an appearance on behalf of Ms. Sjoberg on June 23, 2011. (R. p. 41). On October 18, 2011, Ms. Saine filed a Motion to Strike Attorney Johnson's appearance as counsel for Ms. Sjoberg, arguing that Ms. Sjoberg lacked contractual capacity to retain Attorney Johnson. (R. p. 42). The Probate Court, again operating without jurisdiction over Ms. Sjoberg, granted Ms. Saine's Motion to Strike on December 2, 2011, writing that Ms. Sjoberg lacked contractual capacity to retain Attorney Johnson as counsel and ruling that any contract between Attorney Johnson and Ms. Sjoberg was void. (R. pp. 15-16).

On July 31, 2012, the Probate Court entered an Order *sua sponte* for Release of Client Documents purporting to require Rogers Townsend to turn over Ms. Sjoberg's estate planning documents to Ms. Saine as (purported) attorney-in-fact, temporary guardian, and temporary conservator of Ms. Sjoberg. (R. p. 18.) On August 24, 2012, the Probate Court amended its order to "require" Appellants to turn over Ms. Sjoberg's estate planning documents but this time to the Probate Court rather than to Ms. Saine. (R. p. 21.)

Rogers Townsend responded by filing a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File on August 30, 2012. (R. pp. 113-16). In the Motion, Appellants pointed out that the South Carolina Rules of Professional Conduct required them to review the Probate Court's case file in order to determine whether the first two turnover orders were lawful or whether they sought to compel Appellants to produce privileged documents. (R. pp. 114). They supported their motion with a brief. Appellants also requested to review the Probate Court's file to determine the validity of the first two turnover orders. The Court declined by order entered December 4, 2012 (R. p. 29). We will refer to these three orders as the "Turnover Orders."

The same day, Appellants also filed a Summons and Petition for Writ of Mandamus or Writ of Certiorari ("Writ of Mandamus") in the Circuit Court asking the Circuit Court to order the Probate Court to provide a copy of its file to Appellants so they could see if the Probate Court had jurisdiction over Ms. Sjoberg.

A month later (October 18, 2012) the Probate Court released certain documents from its file, giving Appellants what they needed to see – that there was no jurisdiction, that no notice of

the hearing had been given to Ms. Sjoberg, and that service had been accepted by Ms. Saine herself.

The next day the Probate Court filed a Motion to Dismiss the Mandamus action. Appellants filed a Return to Motion to Dismiss with the Circuit Court on December 11, 2012, informing the Circuit Court that the Writ of Mandamus was moot because they had received what they sought from the Probate Court's file. (R. p. 186).

On October 24, 2012, the Probate Court directed Rogers Townsend to file a second memorandum in support of the Motion to Reconsider Turnover Orders. (R. p. 637). Rogers Townsend complied, maintaining that, after reviewing the Probate Court's file, the documents ordered to be produced by the Turnover Orders were in fact privileged and that Rogers Townsend was prohibited from producing the documents under the Rules of Professional Conduct. (R. p. 168). The Probate Court entered an order denying Appellants' Motion to Reconsider the Turnover Orders on December 4, 2012. (R. pp. 29-38).

On December 6, 2012, Appellants filed a Notice of Intent to Appeal regarding the Turnover Orders and the December 4, 2012, Order denying Appellants' Motion to Reconsider the Turnover Orders. On January 7, 2013, Appellants filed their Grounds of Appeal. While the appeal was pending, Ms. Sjoberg died. (R. p. 45). One day later, Mr. Thomas delivered Ms. Sjoberg's Last Will and Testament to the Probate Court pursuant to the South Carolina Probate Code. (R. p. 52). Appellants filed a Return to Motion to Dismiss with the Circuit Court on December 11, 2012, in which Appellants notified the Circuit Court that the appeal had been rendered moot by Ms. Sjoberg's death. (R. pp. 184, 186). The Circuit Court dismissed Appellants' appeal as moot on January 10, 2014.

Respondent filed the Motion for Sanctions that is the subject of this appeal on January 21, 2014, arguing that Appellants' actions in contesting the Turnover Orders were unreasonable and frivolous.

Appellants filed a Memorandum in Opposition to Ms. Saine's Motion for Sanctions on May 16, 2014, explaining the many reasons why Ms. Saine's Motion for Sanctions was unfounded. Appellants' arguments in opposition to the Motion for Sanctions included the following: Ms. Saine lacked standing to bring the Motion for Sanctions; the Probate Court lacked subject matter jurisdiction to award sanctions; Appellants' actions in contesting the Turner Orders were reasonable and not frivolous; the factors required to be considered pursuant to S.C. Code Ann. §15-36-10(E)(1)-(7) weighed against awarding sanctions; the standard for awarding sanctions under the Sanctions Act and Rule 11 had not been satisfied; and Appellants did not in fact violate the Turnover Orders. (R. pp. 248-62, 491-98).

The Probate Court heard Ms. Saine's Motion for Sanctions on May 20, 2014. (R. p. 46). On January 2, 2015, the Probate Court entered an Order Granting Motion for Sanctions ("Sanctions Order'). (R. p. 61). The Court did not specify a monetary award.

Appellants received notice of the Sanctions Order on January 5, 2015. (R. pp. 510). On January 15, 2015, Appellants filed a Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions ("MTR Sanctions") setting out the many facts and legal arguments the Probate Court failed to consider or misapprehended in granting Ms. Saine's Motion for Sanctions. (R. pp. 499-509).

The Probate Court asked for briefs on the MTR Sanctions in lieu of oral arguments. (R. p. 62). Appellants filed a Memorandum in Support of Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions on February 27, 2015. On March 13, 2015, Ms. Saine filed a

Memorandum in Opposition to Appellants' Motion to Reconsider, and Appellants filed a Reply to her Memorandum in Opposition on March 17, 2015. (R. pp. 600-27).

Rogers Townsend submitted the same arguments in support of the MTR Sanctions as it had submitted in opposition to the Motion for Sanctions, including that the Probate Court lacked subject matter jurisdiction to enter the Sanctions Order, that Ms. Saine lacked standing to file the Motion for Sanctions, that Appellants' arguments in opposition to the Turnover Orders were reasonable, and that sanctions against Appellants was inappropriate under the circumstances, among others. (R. pp. 477-490, 617-27). No hearing was held on Appellants' MTR Sanctions. (R. pp. 52). The Probate Court entered an Order denying Appellants' MTR Sanctions on July 13, 2015 (R. p. 85) and appealed to the Circuit Court.

The Circuit Court affirmed in a perfunctory order and denied the ensuing Motion to Reconsider. This appeal followed, and the parties have now agreed to settle by payment of $20,000 and agreement that the Sanctions Orders be vacated.

STANDARD FOR VACATING LOWER COURT ORDERS

Under Appellate Court Rule 261(a), any settlement agreement submitted to the appellate court for its consideration must be in writing and signed by the parties or their attorneys.

Under Appellate Court Rule 261(d), "In the agreement, the parties may request vacation of opinions, orders, decisions and judgments previously issued in the matter." But the agreement must set forth the facts that warrant such extraordinary relief. We do so here.

DISCUSSION

Had the appeal gone forward, Appellants would have advanced the following arguments. While she does not endorse them, Respondent recognizes the substantial risk to her of the success of these arguments.

I. APPELLANTS' ARGUMENTS ADVANCED IN CHALLENGING THE PROBATE COURT'S *SUA SPONTE* ORDER TO PRODUCE THEIR CLIENT'S ESTATE PLANNING DOCUMENTS WERE EITHER CORRECT OR NON FRIVOLOUS.

A. The Probate Court lacked personal jurisdiction over Ms. Sjoberg

Appellants opposed the Turnover Orders on several grounds, including that the Orders were invalid because the Probate Court lacked personal jurisdiction over Ms. Sjoberg. (R. 113-15, 123, 167-75, 189-203).

From the Record it appears that the Probate Court never obtained personal jurisdiction over Ms. Sjoberg because she was never served with a summons or petition. But, the ultimate success of this argument is not what matters here. All that matters here is whether it was reasonable for Appellants to insist on seeing that the Court had jurisdiction before they complied with an order issued by the Court. Even if the Probate Court ultimately disagreed with Appellants' personal jurisdiction argument, under the facts of this case the argument was reasonable and, that being so, cannot be frivolous as a matter of law.

South Carolina Code §62-5-405(a) provides: "After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition." S.C. Code Ann. §62-5-405(a) (emphasis added). Furthermore, Rule 4(d)(2) of the South Carolina Rules of Civil Procedure requires an incompetent person to be served personally. Ms. Sjoberg was never personally served with the summonses and petitions for the appointment of a guardian and conservator, and the Probate Court did not find otherwise. (R. pp. 633-34, 674). Indeed, when the Probate Court declined to allow Appellants to review its file to determine whether it held proof of personal service on Ms. Sjoberg, Appellants filed the Mandamus action. When the Probate Court reversed its earlier decision and allowed Appellants to review the file, Appellants verified that Ms.

Sjoberg had never been served with process. Appellants, having gotten what they needed to evaluate the Court's Orders, dismissed the Mandamus action. Ms. Saine claimed this was unreasonable. The Probate Court agreed, but never explained why. Accordingly, the Sanctions Order must be reversed for this and the other reasons set forth herein.

Ms. Saine filed the Guardianship and Conservatorship Petitions in her capacity as daughter and purported attorney-in-fact for Ms. Sjoberg and attempted to accept service on behalf of Ms. Sjoberg in the same capacity. (R. 95, 105, 109, 110). Ms. Saine apparently relied on a Durable Power of Attorney executed by Ms. Sjoberg on June 23, 2007, in asserting authority as attorney-in-fact for Ms. Sjoberg. (R. pp. 94-108, 677-78). The Durable Power of Attorney, however, did not confer power to accept service on behalf of Ms. Sjoberg, was never filed, and had been revoked by Ms. Sjoberg over a year earlier, on December 30, 2009. (R. pp. 674, 677-78, 686-87). Therefore, Ms. Saine had no authority to accept service of the Guardianship and Conservatorship Petitions on behalf of Ms. Sjoberg. Because Ms. Sjoberg was never personally served with the Guardianship and Conservatorship Petitions, the Probate Court lacked personal jurisdiction over Ms. Sjoberg, and the Turnover Orders were invalid.

In finding that it had personal jurisdiction over Ms. Sjoberg, the Probate Court erroneously relied upon S.C. Code Ann. §62-5-310. (R. pp. 53-55). S.C. Code Ann. §62-5-310 permits the appointment of a temporary guardian without notice if the court makes certain "emergency preliminary findings," including that the "welfare of the incapacitated person requires immediate action." §62-5-310(A). There was no evidence before the Probate Court to support a finding that Ms. Sjoberg's welfare required immediate action. In fact, Paragraph 6 of the Guardianship Petition asks whether it is necessary to appoint a temporary guardian until a hearing can be held, and Ms. Saine checked the "No" box. (R. p. 96). Thus, the exception to

providing notice prior to the appointment of a temporary guardian outlined in §62-5-310(A) does not apply, and personal service upon Ms. Sjoberg was required.

Even if §62-5-310(A) allowed the Court to appoint a temporary guardian without notice to Ms. Sjoberg (which it did not), the statute does not authorize the appointment of a temporary conservator without notice under any circumstances, so personal service of the Conservatorship Petition would still have been required. See §62-5-310(A).

Furthermore, Section 62-5-310(D) provides: "If a temporary guardian is appointed without petition or notice under this section, a hearing to review the appointment must be held after petition and notice and within thirty days after the appointment of the temporary guardian." §62-5-310(D) (emphasis added). No such hearing was held. Therefore, even if it were determined that it was proper for a temporary guardian to be appointed without notice initially, the appointment expired when the Order was not reviewed within thirty days at a hearing upon petition and notice.

Moreover, §62-5-310(A)(3) limits to six months the time that a temporary guardian appointed without notice may serve. §62-5-310(A)(3). Ms. Saine was appointed as temporary guardian for Ms. Sjoberg on May 11, 2011. Pursuant to the express terms of the Guardianship Order as well as §62-5-310(A)(3), Ms. Saine's authority as temporary guardian expired by November 11, 2011. Therefore, even if Ms. Sjoberg had been personally served with the Summonses and Petitions, the Probate Court no longer maintained jurisdiction over Ms. Sjoberg after November 11, 2011, at the latest, because no permanent guardian for Ms. Sjoberg was ever appointed.

The Probate Court also erroneously relied upon Proofs of Delivery filed by Ms. Saine on June 8, 2011, in support of its finding that it maintained personal jurisdiction over Ms. Sjoberg.

(R. p. 54). The Proofs of Delivery state that personal delivery of the Guardianship and Conservatorship Petitions was made upon Attorney Hightower and three attorneys at Rogers Townsend. (R. pp. 111-12). The Proofs of Delivery were ineffective to perfect service upon Ms. Sjoberg because they did not provide proof of service on Ms. Sjoberg individually. (R. pp. 111-12). Additionally, the Proofs of Delivery state that delivery of the Petitions was made on June 6, 2011. (R. pp. 111-12). The ex parte hearing on the Petitions was held a month earlier, on May 9, 2011, and the Court appointed a temporary guardian and conservator for Ms. Sjoberg on May 12, 2011. (R. pp. 1-7, 41). Service of the Petitions could not be perfected after a hearing had already been held and after a temporary guardian and conservator had already been appointed for Ms. Sjoberg.

To permit a party to perfect service after a matter has already been adjudicated would be repugnant to protections mandated under due process, and a party's attempt to do so should raise the suspicions of the court. No lawyer should be sanctioned for pointing out this lack of fundamental fairness.

Because Ms. Sjoberg was never served with the Guardianship and Conservatorship Petitions, the Probate Court lacked personal jurisdiction over Ms. Sjoberg, and its Turnover Orders were void. Even if it were ultimately determined that the Probate Court did have personal jurisdiction over Ms. Sjoberg (and it never did), it was certainly not unreasonable and, hence, not frivolous, for Appellants to argue lack of personal jurisdiction given the factual and legal complexity of the issues involved.

B. No one had authority to waive service for Ms. Sjoberg

The Probate Court erroneously concluded that Ms. Sjoberg waived her right to personal service because: 1) Appellants did not inform Ms. Saine that they could not accept service on

behalf of Ms. Sjoberg; 2) Attorney Thomas did not suggest to Attorney Johnson that he should assert a defense of lack of jurisdiction; 3) Attorney Johnson did not challenge personal jurisdiction on Ms. Sjoberg's behalf; and 4) Attorney Michael Polk and Attorney Hightower did not challenge personal jurisdiction on Ms. Sjoberg's behalf. (R. pp. 54-58). Each of these findings is contrary to law and the facts.

First of all, the Probate Court specifically and correctly noted that neither Attorney Thomas nor any attorney at Rogers Townsend was counsel of record for Ms. Sjoberg in this matter. (R. p. 25). Therefore, Appellants could not waive service on behalf of Ms. Sjoberg. Similarly, Attorney Johnson's failure to challenge personal jurisdiction could not have effectively waived service on behalf of Ms. Sjoberg because the Probate Court found that Ms. Sjoberg lacked capacity to retain Attorney Johnson and that any contract between Ms. Sjoberg and Attorney Johnson was void. (R. p. 16, paragraph 17).

Neither Attorney Polk nor Attorney Hightower was able to waive service for Ms. Sjoberg because, for the reasons stated herein, the Probate Court lacked personal jurisdiction over Ms. Sjoberg to appoint them.

All Ms. Saine had to do was have a process server deliver the summonses and petitions to Ms. Sjoberg. But, for some reason that has never been disclosed, Ms. Saine chose not to take that step. It was reasonable and, therefore, not frivolous for Appellants to argue that no one had authority to waive service on behalf of Ms. Sjoberg when it was determined that Appellants were not Ms. Sjoberg's counsel in this matter and that Ms. Sjoberg lacked capacity to retain Attorney Johnson, and the appointments of representatives for Ms. Sjoberg were invalid since the Probate Court lacked personal jurisdiction over Ms. Sjoberg.

C. Ms. Sjoberg was denied due process in the Guardianship and Conservatorship proceedings.

Appellants also opposed the Turnover Orders on the ground that Ms. Sjoberg was denied due process of law in the Conservatorship and Guardianship Proceedings.

"The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *State v. Binnarr*, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012) (citations omitted); *see also, e.g., Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 765, 171, 656 S.E.2d 346, 350 (2008). The due process requirements "in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur." Binnarr, 400 S.C. at 165, 733 S.E.2d at 894 (citations omitted). As the South Carolina Supreme Court explained in *Webster v. Clanton*:

> It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.

Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972) (citations omitted) (emphasis added).

A court takes away an individual's core freedoms when it declares her to be incapacitated and appoints a guardian or conservator for her. Before such fundamental rights can be stripped away, the person is entitled to notice, an opportunity to be heard, an opportunity for meaningful review of the declaration and appointments, and representation by counsel of her choice.

Similarly, *In re Nash*, 799 So.2d 1271, 1273 (2001), held a court-appointed attorney could not accept service or act on behalf of a party to a proceeding where service of process was not tendered to the party herself. There, a curator was appointed by the trial court to take care of

respondent's interests. Id. at 1271. A judgment of interdiction was entered by the court, stripping the Respondent of her legal rights. *Id.* Ms. Saine never perfected service upon the respondent. Id. The court ultimately held that because service was not personal as to the respondent herself, the appointment of the curator was premature and without effect, and the curator's failure to object to the sufficiency of service of process did not result in a waiver. *Id.* at 1273. This is because the law "envisions an initial service of process on the defendant and an opportunity for her to retain counsel of her choice and to answer the petition." *Id.*

Ms. Sjoberg was not afforded any of these fundamental due process rights. Ms. Sjoberg was denied due process of law when she was not personally served with the Guardianship and Conservatorship Petitions, when Ms. Sjoberg was not provided notice and a hearing to review the appointment of a temporary guardian within thirty days of the appointment as required by S.C. Code Ann. §§62-5-310(D), and when Ms. Sjoberg was deprived of the right to have counsel of her choice. Because the entire Conservatorship and Guardianship Proceedings violated due process, the Turnover Orders were invalid, and Appellants had an ethical obligation to show they were invalid and insist that the defects be cured before revealing the contents of Ms. Sjoberg's Last Will and Testament.

D. Ms. Sjoberg's estate planning documents were protected by the attorney client privilege.

One of Appellants' most fundamental arguments in opposition to the Turnover Orders was that the Orders required the production of documents protected by the attorney-client privilege. (R. pp. 123, 175, 200-01). The South Carolina courts have "long recognized the attorney-client privilege against disclosure of confidential communications by a client to his attorney." *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980) (citations omitted). "In

order to establish the privilege, it must be shown that the relationship between the parties was that of attorney and client and that the communications were of a confidential nature." *Id.* Attorney Thomas served as Ms. Sjoberg's attorney for purposes of drafting her estate planning documents. (R. pp. 19, 52-53). Estate planning documents are confidential and private in nature. Thus, any of Ms. Sjoberg's estate planning documents in Attorney Thomas' possession were protected by the attorney-client privilege. See *In re Guardianship of York*, 44 Wash. App. 547 (Wash. Ct. App. 1986) (holding that a protected person's will was protected by the attorney-client privilege and that production of the will by the protected person's attorney would violate the rules of professional conduct). The Turnover Orders, therefore, called for the disclosure of documents protected by the attorney-client privilege.

Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct permits, but does not require, an attorney to reveal information protected by the attorney-client privilege in order to comply with court order. Rule 1.6(b)(7), SCRPC, Rule 407, SCACR. As discussed above, comment 16 to Rule 1.6(b)(7), however, requires an attorney ordered to disclose privileged information to "assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." *Id.* at cmt. 16. After reviewing the Probate Court's file, Appellants concluded that the Turnover Orders were invalid because the Probate Court lacked personal jurisdiction over Ms. Sjoberg, Ms. Sjoberg had been denied due process of law, and the information sought was protected by the attorney-client privilege. (R. pp. 168-75, 200-01, 634-35). Therefore, Appellants reasonably believed that they were not permitted to disclose Ms. Sjoberg's estate planning documents because the Turnover Orders were unlawful.

The Probate Court wrongly concluded that Ms. Sjoberg had provided informed consent to disclose her estate planning documents and that Ms. Sjoberg had waived the attorney-client privilege due to the fact that Ms. Sjoberg had included Ms. Saine in certain past estate planning meetings and shared drafts of her will with Ms. Saine. (R. 52, 70-72). The fact that Ms. Sjoberg had included Ms. Saine in certain past estate planning meetings and had informed her of certain decisions did not constitute informed consent to disclose all future estate planning documents, particularly when Attorney Thomas was aware of ongoing difficulties in the relationship between Ms. Saine and Ms. Sjoberg. (R. pp. 633, 673). Likewise, Ms. Sjoberg's past disclosure of certain estate planning information did not constitute a waiver of the attorney-client privilege relating to all estate planning documents Ms. Sjoberg would ever have prepared. To hold otherwise would mean that anytime an individual shares any information regarding her estate planning, she would be giving indefinite informed consent to share all future estate planning information and would waive the attorney-client privilege as to all future estate planning information and documents.

The Probate Court also held that Appellants should have produced Ms. Sjoberg's estate planning documents because S.C. Code Ann. §62-5-427 requires the conservator or the court to take into account any "known estate plan" of the protected person. (R. 53, 72). This statute, however, only applies in distributing and investing assets of a protected person's estate. §62-5-427. Ms. Saine has never argued, and the Probate Court did not find, that Ms. Sjoberg's estate plan needed to be considered because Ms. Sjoberg's conservator needed to invest or distribute any assets. (R. 40-85). Rather, the desire to review Ms. Sjoberg's estate planning documents appears to have been motivated by curiosity.

The Probate Court's Order made much of the fact that Ms. Sjoberg's final will was the same as the will provided to Ms. Saine, and the Court proclaims that Appellants "at the very least

. . . should have notified Ms. Saine [Respondent] that she was already in possession of a copy of Ms. Sjoberg's most recent Will." (R. p. 52). In making this statement, the Probate Court failed to appreciate that the privileged information at issue was whether Ms. Sjoberg had changed her will subsequent to providing a copy of her Will to Ms. Saine. Appellants would have violated the attorney-client privilege had they informed Ms. Saine that Ms. Sjoberg did not execute a subsequent will, particularly since it was never determined that Ms. Sjoberg lacked testamentary capacity. (R. pp. 42, 64-65).

Given the fact that the Turnover Orders required Appellants (Ms. Sjoberg's former attorneys), to produce Ms. Sjoberg's estate planning documents, which are highly confidential in nature, and the unusual factual background of this matter and of Appellants' representation of Ms. Sjoberg, it was certainly not unreasonable and hence, not frivolous as a matter of law, for Appellants to argue that the Turnover Orders improperly ordered the disclosure of privileged documents.

II. APPELLANT'S ARGUMENTS RELATED TO DEFECTS IN PROBATE COURT'S SANCTIONS ORDER:

A. Ms. Saine [Petitioner] lacked standing.

"[S]tanding is a fundamental prerequisite for instituting a legal action." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014); *see also Youngblood v. S.C. Dept. of Social Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013). A party's claims should be dismissed if the party lacks standing to maintain the claims, and the court need not examine the merits of the claims. *Carnival*, 407 S.C. at 81, 753 S.E.2d at 853; Youngblood, 402 S.C. at 323, 741 S.E.2d at 521.

Ms. Saine filed her Motion for Sanctions in her capacities as daughter and attorney-in-fact for Ms. Sjoberg. (R. p. 228). Neither position as "daughter" nor "attorney-in-fact" had standing to pursue sanctions.

As Daughter: Ms. Saine's role as daughter of Ms. Sjoberg did not give her standing to pursue claims or sanctions on behalf of Ms. Sjoberg. Ms. Saine's role as "daughter" conferred no special status in this context. She would need to have brought the Petition as Personal Representative, which she did not do.

As Alleged Attorney-in-Fact: Not only had Ms. Sjoberg revoked Ms. Saine's appointment as attorney-in-fact expired on December 30, 2009 (R. pp. 674, 677-78, 686-87), but any such power would have ended anyway with the death of Ms. Sjoberg on January 7, 2014. Ms. Saine's authority to file a motion for sanctions had, at the very worst, expired fourteen days before she filed the motion for sanctions on January 21, 2014.

As Alleged Guardian or Conservator: Not only was Ms. Saine never properly appointed to serve as temporary guardian and temporary conservator for Ms. Sjoberg, but any authority as temporary conservator or temporary guardian ended when Ms. Sjoberg died on January 7, 2014. See S.C. Code Ann. §§62-5-306; 62-5-430. The court system simply does not contemplate deceased persons having guardians or conservators.

The Probate Court entered its Sanctions Order despite acknowledging that Ms. Saine did not have standing to bring her motion. (R. p 49). Rule 17 of the South Carolina Rules of Civil Procedure provides that "[e]very action shall be prosecuted in the name of the real party in interest," and it provides procedures for amending pleadings to name the proper party. Rule 17, SCRCP. The requirement that an action be brought by the real party in interest is mandatory,

and the Rule does not contemplate a waiver of the requirement simply because the person theoretically could have chosen to pursue the matter in some other capacity.

Ms. Saine did not bring her Motion for Sanctions in her capacity as personal representative of Ms. Sjoberg's estate, and presumably for strategic purposes Ms. Saine never attempted to amend her Motion to appear in that capacity.

Accordingly, the Probate Court erred when it found that Ms. Saine was the real party in interest for purposes of the Motion. The fact that Ms. Saine could have brought the Motion in some other capacity does not confer standing on Ms. Saine when she expressly chose to file the Motion in a capacity in which she lacks standing.

An order of sanctions is a serious thing, and a lawyer facing one is entitled to have it brought correctly. This motion was not brought correctly as a matter of law, and therefore the Sanctions Order should have been reversed.

B. The Probate Court lacked subject matter jurisdiction to issue the Sanctions Order

Because Ms. Saine's Motion for Sanctions was served and filed too late under both the Sanctions Act and Rule 11, the Probate Court lacked subject matter jurisdiction to consider the Motion. Therefore, Ms. Saine's Motion for Sanctions should have been dismissed.

II. Ms. Saine's Motion for Sanctions was untimely under the Sanctions Act SC Code 15-36-10

The Probate Court erred in holding that Ms. Saine's Motion for Sanctions was timely filed. Because the Motion was not filed within ten days of Ms. Saine's receipt of written notice of the Probate Court's December 4, 2012, Order Denying Appellants' Motion to Reconsider the Turnover Orders, the Motion for Sanctions was untimely and should have been dismissed.

Motions for sanctions under the Sanctions Act are post-trial motions that must be brought within ten days of receipt of notice of the underlying order. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 160-62, 758 S.E.2d 483, 495-96 (2014) ("Motions made pursuant to the FCPSA are post-trial motions. . . . As such, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA." (citations omitted)); *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 431-33, 570 S.E.2d 187, 189-90 (Ct. App. 2002). The Probate Court correctly acknowledged this controlling law on pages 10 and 11 of its Sanctions Order. (R. pp. 49-50). As with other post-trial motions, a court loses subject matter jurisdiction to award sanctions upon expiration of the time limit for filing a motion for sanctions. *See In re Beard*, 359 S.C at 358, 597 S.E.2d at 838 and *Pitman*, 351 S.C. at 431-33, 570 S.E.2d at 189-90.

The Probate Court entered its Order Denying Appellants' Motion to Reconsider the Turnover Orders on December 4, 2012. Because Ms. Saine's Motion for Sanctions is based upon Appellants' actions in challenging the Turnover Orders, Ms. Saine was required to file the Motion within ten days of receiving notice of the Probate Court's December 4, 2012, Order Denying Appellants' Motion to Reconsider the Turnover Orders. Because Ms. Saine's Motion for Sanctions was not filed until January 21, 2014 (over a year after the Order Denying Appellants' Motion to Reconsider the Turnover Orders), Ms. Saine's Motion for Sanctions was untimely, and the Probate Court lacked subject matter jurisdiction to consider the Motion. Ms. Saine's Motion should therefore have been dismissed as Appellants pointed out.

ii. The Probate Court erred in holding that Ms. Saine had ten days from the Circuit Court's dismissal of Appellants' Appeal of the Turnover Orders to file her Motion for Sanctions

The Probate Court erroneously held that Ms. Saine had ten days from receiving notice of the Circuit Court's dismissal of Appellants' appeal of the Turnover Orders to file her Motion. (R. pp. 50, 81). In so holding, the Probate Court seems to have relied on the fact that no permanent guardian or conservator for Ms. Sjoberg was ever appointed and that a final judgment in the underlying guardianship and conservatorship proceedings had not been entered. (R. 50, 76-78). The Probate Court failed to apprehend that the basis for Ms. Saine's Motion against Appellants, who are not and never have been parties in this case, was Appellants' actions in contesting the Turnover Orders.

The December 4, 2012, Order denying Appellants' Motion to Reconsider the Turnover Orders was a final judgment as far as Appellants were concerned. The parties received notice of the Order from the court by email on December 4, 2012, triggering the ten-day time limit for filing related post-trial motions, including a motion for sanctions. Therefore, Ms. Saine was on notice of all of the facts that formed the basis of her Motion for Sanctions when the December 4, 2012, Order was entered. The fact that a permanent guardian and conservator had not been entered in the underlying proceedings is immaterial for purposes of whether a final judgment had been entered on Rogers Townsend's (a non-party) claims regarding the validity of the Turnover Orders (which are the claims forming the basis of the Motion for Sanctions) such that the deadline for filing a related sanctions motion was triggered.

iii. Ms. Saine's Motion for Sanctions was Untimely under Rule 11

The Probate Court erroneously held that Ms. Saine's Motion for Sanctions was timely under Rule 11 of the South Carolina Rules of Civil Procedure. (R. 79-81). Because Ms. Saine's Motion for Sanctions was not filed within a reasonable time after the December 4, 2012, Order denying Appellants' Motion To Reconsider the Turnover Orders, the Motion was untimely under Rule 11.

Rule 11 does not specify a time limit for filing a motion for sanctions, and no appellate court in South Carolina has determined what the appropriate time frame should be. Other courts, however, have held that a party must make a motion for sanctions pursuant to Rule 11 within a reasonable time of discovering the conduct at issue. *See, e.g., Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151-53 (4th Cir. 2002) (finding a delay of fourteen months in moving for sanctions unacceptable); *Griffin v. Sweet*, 136 N.C. App. 762, 765, 525 S.E.2d 504, 506 (N.C. Ct. App. 2000) ("Although Rule 11 does not specify a time limit for filing a sanctions motion . . . 'a party should make a Rule 11 motion within a reasonable time after he discovers an alleged impropriety.'" (citations omitted)). Indeed, it would be unreasonable to permit a party to wait indefinitely to bring a motion for sanctions, and it would defeat the purpose of Rule 11 of deterring improper conduct. In fact, in its Order Denying MTR Sanctions, the Probate Court accepts the reasonableness standard for the deadline for filing a Rule 11 motion for sanctions. (R. pp. 80-81).

The Probate Court erroneously considered the length of time between Ms. Saine's filing of the Motion for Sanctions and the Circuit Court's dismissal of Appellants' appeal of the Turnover Orders as moot in determining whether the Motion was filed within a

reasonable time. (R. p. 81). For the reasons set forth herein, Ms. Saine was required to file the Motion within a reasonable time of the December 4, 2012, Order denying Appellants' MTR the Turnover Orders, not the Circuit Court's dismissal of the Appellants' appeal of the Turnover Orders. Ms. Saine filed her Motion for Sanctions over a year after the December 4, 2012, Order denying Appellants' Motion To Reconsider the Turnover Orders. (R. pp. 228-32). The policy behind this is clear. If the period did not begin to run until after the appeal was concluded this would lead to two appeals when both the substantive issues addressed in the appeal as well as the sanctions motions could and should go up for review in the same appeal. A delay of thirteen months in seeking sanctions under Rule 11 is unreasonable as a matter of law. See Hunter, 281 F.3d at 151-53 (fourteen months). Accordingly, Ms. Saine's Motion was untimely under Rule 11 and should have been dismissed.

C. Appellants' efforts under this case as a non-party responding to a sua sponte order to produce privileged matter, fulfilling its duty under RCP 1.6(b)(7) cannot be the subject of sanctions as a matter of law.

As explained above, the Turnover Orders required the disclosure of documents that, absent waiver or informed consent, were protected by the attorney-client privilege. Rule 1.6 of the South Carolina Rules of Professional Conduct requires an attorney ordered by the court to disclose privileged information to "assert on behalf of the client all nonfrivolous claims that the order is not authorized by law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." Rule 1.6, cmt. 16, RPC, Rule 407, SCACR.

As evidenced by Appellants' extensive briefing regarding the validity of the Turnover Orders, there were many nonfrivolous arguments available that the Turnover Orders were

invalid, including, but not limited to, that the Probate Court lacked personal jurisdiction over Ms. Sjoberg, that the Probate Court lacked subject matter jurisdiction to enter the Turnover Orders, that the Probate Court deprived Ms. Sjoberg of due process of law, and that the Turnover Orders required the disclosure of privileged information. (R. pp. 117-37, 167-81, 189-203). As a matter of law, it was reasonable for Appellants to do what the South Carolina Rules of Professional Conduct required Appellants to do – to contest the Turnover Orders by asserting all nonfrivolous claims that the Orders were invalid. Conduct required by the Rules of Professional Conduct cannot serve as a basis for sanctions.

D. Appellants' attempt to review the Probate Court's file in effort to discharge their ethical duty under RPC 1.6(b)(7) was not so unreasonable or frivolous to satisfy the standard for awarding sanctions

The Probate Court erroneously held that Appellants' actions in attempting to review the Probate Court's file relating to Ms. Sjoberg's Guardianship and Conservatorship Proceedings were unreasonable and frivolous, and this holding was a basis for the Probate Court's imposition of sanctions. (R. pp. 58-59, 82-83).

The Probate Court based its Sanctions Orders in part on Appellants' filing of a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File and a Summons and Petition for Writ of Mandamus or Writ of Certiorari in the Circuit Court ("Writ of Mandamus"). (R. pp. 58-59, 82-83).

Because the Turnover Orders directed Attorney Thomas (Ms. Sjoberg's former estate planning attorney) to produce Ms. Sjoberg's estate planning documents, the Orders required the production of documents that appeared to be protected by the attorney-client privilege. Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct permits (but does not require) an attorney to reveal information protected by the attorney-client privilege in order to comply with

court order, but comment 16 to the Rule **requires an attorney ordered to disclose privileged information to "assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law**." Rule 1.6, cmt. 16, RPC, Rule 407, SCACR.

In order to comply with Rule 1.6, Appellants had to determine whether the Turnover Orders were valid and whether Ms. Sjoberg's estate planning documents were in fact privileged, as they appeared to be. To make these determinations, Appellants needed to review the Probate Court's file relating to Ms. Sjoberg's Guardianship and Conservatorship Proceedings. Upon receiving notice of the Turnover Orders, Appellants asked the Probate Court for permission to review the Court's file, but the Court orally denied Appellants' request. (R. p. 637). Rather than simply ignoring the Turnover Orders, Appellants filed the Motion to Reconsider Turnover Orders on August 30, 2012. (R. pp. 113-16). Appellants' Motion requested permission to review the Probate Court's file and stated that Appellants were prohibited by the Rules of Professional Conduct from complying with the Turnover Orders until Appellants could review the Court's file and determine whether the Turnover Orders were lawful. (R. pp. 113-16). In a further attempt to comply with their ethical duties, Appellants filed the Writ of Mandamus in the Circuit Court on September 17, 2012. (R. pp. 138-66). The Writ of Mandamus asked the Circuit Court to command the Probate Court to turn over copies of the Court's file so that Appellants could comply with the Rules of Professional Conduct. (R. pp. 138-40).

Rule 1.6 of the Rules of Professional Conduct required Appellants to assert all nonfrivolous claims that the Turnover Orders were not lawful. In order to determine whether the

Turnover Orders might be unlawful, Appellants had to review the Court's file. It was reasonable and hence, not frivolous, as a matter of law for Appellants to pursue reviewing the Probate Court's file prior to complying with the Turnover Orders because that is what the Rules of Professional Conduct required Appellants to do. It was legal error for the Probate Court to sanction Appellants for actions taken in compliance with Appellants' ethical duties.

E. The Probate Court erroneously held that Appellants continued to pursue obtaining the Court's file after obtaining the file

The Probate Court held: "It was completely unreasonable and frivolous for Robert Thomas and Rogers Townsend and Thomas to continue to pursue the matter of demanding that they receive the Guardianship and Conservatorship files, even after they already had the files in hand." (R. pp. 59, 83). This finding was erroneous, as Appellants did not in fact continue to pursue obtaining the Probate Court's file after they received copies of the file.

The Probate Court provided certain materials from its file to Appellants on September 25, 2012. (R. pp. 18-20, 44). Appellants' MTR Turnover Orders and Writ of Mandamus, which both sought permission to review the Court's file, were filed on August 30, 2012, and September 17, 2012, respectively. Thus, Appellants' actions in pursuing reviewing the Court's file were taken before the Court provided its file to Appellants. In fact, Appellants filed a Return to Motion to Dismiss with the Circuit Court on December 11, 2012, informing the Court that the case initiated by the Writ of Mandamus was moot because the Probate Court had finally provided its file to Appellants. (R. pp. 186). The Return confirmed that Appellants did not continue to pursue obtaining the Court's file after receiving the file.

The Probate Court's conclusion that Appellants continued to pursue obtaining the file after obtaining the file is erroneous, and it was error for the Court to sanction Appellants for actions they did not take.

F. Substantively, arguments advanced by Appellants were not frivolous as a matter of law

The Probate Court's Sanctions Order is based upon Appellants' decision to contest the Turnover Orders. The Turnover Orders required Appellants to turn over Ms. Sjoberg's estate planning documents. The extensive briefing regarding the Turnover Orders demonstrates that the question of the validity of the Turnover Orders raises complex, novel issues of law.

Appellants raised numerous good-faith arguments in their challenge of the Turnover Orders, including the facts that the Probate Court lacked personal jurisdiction over Ms. Sjoberg, that no one had authority to waive service on behalf of Ms. Sjoberg, that Ms. Sjoberg was denied due process of law, and that the Turnover Orders required the disclosure of documents protected by the attorney-client privilege. (R. 113-15, 123, 167-75, 189-203). Regardless of whether Appellants' arguments were ultimately deemed successful, they were reasonable and certainly not frivolous.

Notably, in imposing sanctions against Appellants, the Probate Court rejected the merits of Appellants' arguments in opposition to the Turnover Orders, but it never found or explained why the arguments were unreasonable or frivolous. Appellants' arguments in opposition to the Turnover Orders were reasonable, and, because they were reasonable, Appellants **had to raise them** in order to comply with comment 16 to Rule 1.6 of the South Carolina Rules of Professional Conduct. See Rule 1.6, SCRPC, Rule 407, SCACR, cmt. 16 ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law."); *see also* Profs. Robert M. Wilcox and Nathan M. Crystal, Annotated South Carolina Rules of Professional Conduct, Annotation to Rule 1.6 (S.C. Bar, Continuing Legal Education Division

2013) ("Absent informed consent to disclosure of information, the lawyer has an ethical obligation to raise any nonfrivolous claims that the information is not subject to disclosure.")).

G. Appellants filing of a notice of intent to appeal and grounds for appeal cannot serve as a basis for sanctions

The Probate Court improperly granted Ms. Saine's Motion for Sanctions based in part on Appellants' filing of a Notice of Intent to Appeal and a Grounds of Appeal challenging the Turnover Orders. (R. pp. 59-60, 82-83). Neither the Sanctions Act nor Rule 11 of the South Carolina Rules of Civil Procedure authorizes sanctions related to appeals.

The Sanctions Act does not state that sanctions may be imposed on attorneys or litigants participating in appeals. See §15-36-10 et seq.

Rule 11 applies "in all suits of a civil nature." Rule 1, SCRCP. Rule 74 provides that appeals to the circuit court from an inferior court or administrative agency "shall be in accordance with the statutes providing such appeals." Rule 74, SCRCP. Appeals from the probate court to the circuit court are governed by §62-1-308 of the Probate Code. The Probate Code does not provide for sanctions related to appeals. *See* §62-1-100 *et seq.*

Because neither the Sanctions Act nor Rule 11 authorizes sanctions related to appeals from the probate court to the circuit court, the Probate Court erred when it sanctioned Appellants for filing of a Notice of Intent to Appeal and Grounds of Appeal with the Circuit Court relating to the Turnover Orders.

h. The Probate Court erred in granting Ms. Saine's Motion for Sanctions without considering the factors enumerated in §15-36-10(E)

The Probate Court entered its Sanctions Orders without considering the factors mandated by the Sanctions Act, including, but not limited to, the complexity and novel nature of the issues involved, Appellants' lack of previous violations of the Sanctions Act or Rule 11, and the fact

that Appellants had nothing to gain from contesting the Turnover Orders apart from complying with the Rules of Professional Conduct.

Section 15-36-10(E) of the Sanctions Act provides:

> (E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:
>
> 1) the number of parties;
>
> 2) the complexity of the claims and defenses;
>
> 3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
>
> 4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
>
> 5) previous violations of the provisions of this section;
>
> 6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
>
> 7) other factors the court considers just, equitable, or appropriate under the circumstances.

§15-36-10(E) (emphasis added). This is mandatory: the court "shall" take the enumerated factors into account in determining whether to award sanctions, the provision is mandatory. Section 15-36-10(F) further provides: "In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section." §15-36-10(F) (emphasis added). The Sanctions Act contains two separate provisions mandating that the court consider previous violations of the Sanctions Act when determining whether to impose sanctions, thereby emphasizing the importance of considering past violations when determining whether to impose sanctions.

The Probate Court failed entirely to consider the factors enumerated in §15-36-10(E). (R. pp. 40-61, 62-85). The Court failed to consider the fact that the law regarding the confidential and privileged nature of a living person's estate planning documents and the waiver and revocation of the privileged nature of the documents is complex and undeveloped. (R. pp. 40-61, 62-85).

The Court failed to consider the fact that Appellants had little time to investigate and analyze the issues involved before being faced with the choice of ignoring the Turnover Orders, filing the Motion to Reconsider the Turnover Orders, or violating their ethical duties. (R. pp. 40-61, 62-85).

The Court failed to consider the fact that virtually no pertinent information had been disclosed to Appellants before Appellants were forced to either file the Motion to Reconsider the Turnover Orders, ignore the Turnover Orders, or violate their ethical duties. (R. pp. 40-61, 62-85).

The Court failed to consider the fact that there were multiple attorneys involved in the matter and that Appellants were not parties to the actions, further complicating the case. (R. pp. 40-61, 62-85).

Perhaps most significantly, the Court failed to consider Attorney Thomas' May 16, 2014, Affidavit, in which he certifies that he has never been sanctioned under the Sanctions Act or Rule 11 and outlines his outstanding legal career and service to the Bar. (R. pp. 40-61, 62-85, 672).

The Court also flatly ignored the May 16, 2014, Affidavit of Attorney D. Cravens Ravenel, an expert in the area of professional liability and ethics, in which he concludes that Appellants' filings and arguments were reasonable and not frivolous. (R. pp. 40-61, 62-85, 671).

All of the factors required to be considered by §15-36-10(E) weigh heavily against sanctioning Appellants. The Probate Court did not consider these factors.

The standard for awarding sanctions under Rule 11 "is essentially the same" as the standard for awarding sanctions under the Sanctions Act. In re Beard, 359 S.C. at 360, 597 S.E.2d at 839; Father v. S.C. Dep't of Social Servs., 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003). It was therefore also error for the Court to award sanctions under Rule 11 without considering the additional factors mandated by the Sanctions Act. A consideration of those factors reveals that sanctioning Appellants was clear error as a matter of law.

I. The Probate Court misapplied the standard for awarding sanctions by examining the merits of Appellants' arguments but failing to make a determination that the arguments were frivolous.

The Probate Court never explained why Appellants' arguments were unreasonable and frivolous and never found that they were.

Under Rule 11, "[a] trial court may impose sanctions 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." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597, 713 S.E.2d 624, 627-28 (2011) (citations omitted) (emphasis added).

Rule 11 is intended only for exceptional circumstances, and sanctions are not warranted under Rule 11 simply because a court disagrees with a party's arguments. See *Brubaker v. City of Richmond*, 943 F.2d 1363, 1373-77 (4th Cir. 1991); *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 483 (3rd Cir. 1987). "A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed." *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50 (2008).

Under the Sanctions Act, an attorney may be sanctioned for filing a frivolous pleading, motion, or document or for making frivolous arguments. §15-36-10. To prevail on a motion for sanctions under the Sanctions Act, an aggrieved party must show that the party being sanctioned acted frivolously. *See Father*, 353 S.C. at 259, 578 S.E.2d at 13. Thus, sanctions are proper under both Rule 11 and the Sanctions Act only when a party presents unreasonable and frivolous arguments, and not simply when a party presents arguments ultimately rejected by the court.

The Probate Court never made a determination as to whether Appellants' arguments were unreasonable and frivolous and never provided any explanation as to why it was unreasonable and frivolous for Appellants to make the arguments.

For example, the Court explained why it disagreed with Appellants' arguments that Ms. Sjoberg's estate planning documents were privileged and that the Court lacked personal jurisdiction over Ms. Sjoberg, but it did not make a determination or explain why the Appellants' arguments were frivolous. (R. pp. 51-56, 69-73).

Also, the Court never cited any controlling case law contrary to Appellants' position. Further, the Probate Court never identified any alleged improper motive or purpose of Appellants in making the arguments. (R. pp. 51-56, 69-73).

The fact that the Probate Court disagreed with Appellants' positions cannot serve as a basis for imposing sanctions on Appellants. The standard for granting sanctions under Rule 11 and the Sanctions Act is far more stringent than simply finding a party's arguments to ultimately be without merit.

As evidenced by the thorough research and support set forth in Appellants' Memoranda in Support of the Motion to Reconsider the Turnover Orders as well as Appellants' Grounds of

Appeal relating to the Turnover Orders, Appellants' arguments in opposition to the Turnover Orders were made in good faith and were not frivolous. (R. pp. 117-37, 167-81, 189-203). Appellants, who have never been parties to the underlying matter and who had utterly no financial or other ulterior motive to do wrong, expended extraordinary time and effort in order to carefully research relevant law and do what Appellants reasonably thought was required by the Rules of Professional Conduct to safeguard their former client's privileged materials. At the time Ms. Saine's Motion for Sanctions was filed, Appellants represent that they had expended over 180 hours in analyzing the ethical issues and conflicts presented by the Turnover Orders. Most importantly, Appellants never charged Ms. Sjoberg or anyone else for this time. (R. p. 637).

Because Appellants' actions were not unreasonable and were not frivolous, and because the Probate Court never found they were, the Sanctions Order must be reversed.

J. Ms. Saine was not a prevailing party

The Probate Court improperly granted Ms. Saine's Motion for Sanctions because Ms. Saine was not a "prevailing party." Section 15-36-10(C)(1) of the Sanctions Act provides that the court shall determine whether a claim or defense of a party was frivolous "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party." S.C. Code Ann. §15-36-10(C)(1).

Ms. Saine was not a prevailing party because Ms. Saine was not a party to the production proceedings. The Probate Court entered the Turnover Orders *sua sponte*. (R. pp. 18-24). Ms. Saine never served a subpoena on Appellants, never filed a motion for a Turnover Order, and never filed a motion to compel.

Moreover, Appellants were not parties. They were mere custodians of highly confidential information.

Finally, Appellants prevailed in many aspects of the Turnover Orders: The first Turnover Order was never even delivered to Appellants, and the Probate Court amended it before it was sent to Appellants. When the Amended Turnover Order was delivered, Appellants complied with it in part and objected to the rest, and, as a result, the Court issued a Second Amended Turnover Order that significantly reduced the scope of the Amended Order (so that drafts and working papers were no longer sought). This is a partial victory for Appellants and certainly not such a loss that sanctions should have been ordered for non-compliance with the Amended Order.

K. Appellants did not violate the Probate Court's Turnover Orders on its face

Because the Turnover Orders contained an exception for privileged documents, and Appellants promptly produced all non-privileged documents requested, Appellants did not violate the Orders.

For the reasons stated herein, Ms. Sjoberg's estate planning documents were protected by the attorney-client privilege, and the Probate Court erred in finding that the documents were not privileged.

As further explained above, the Probate Court also erred in finding that Ms. Sjoberg had waived the attorney-client privilege in relation to her estate planning documents and had given Appellants informed consent to forever disclose all of her estate planning documents simply because she had made Ms. Saine privy to certain estate planning decisions in the past. Additionally, the Probate Court erred in holding that a protected person's estate planning documents are not privileged under the Probate Code because S.C. Code Ann. §62-5-427 requires a conservator to take into account the estate plan of an incapacitated person for the

purpose of making investments and distributions from the protected person's estate. Section 62-5-427 only applies in narrow circumstances (making investments, distributions, and the like) and does not amount to a legislative declaration that estate planning documents of a protected person, particularly a protected person with ongoing testamentary capacity, are not privileged. See §62-5-427. The Court did not find, and Ms. Saine did not claim, that investments or distributions needed to be made from Ms. Sjoberg's estate. (R. p. 53, 72). Therefore, §62-5-427 was inapplicable under the circumstances, and Ms. Sjoberg's estate planning documents were protected by the attorney-client privilege.

Both the Order for Release of Client Documents and Amended Order for Release of Client Documents contained an exception for privileged documents that stated:

Nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. (R. pp. 20, 23). Thus, the Turnover Orders, by their explicit terms, did not require Appellants to turn over privileged documents. On August 3, 2012, Appellants promptly produced the requested non-privileged documents in compliance with the Turnover Orders. (R. pp. 304-05).

Because the Turnover Orders did not require Appellants to turn over privileged documents, and Appellants promptly turned over all non-privileged documents requested, Appellants did in fact comply with the Turnover Orders. Because Appellants did not violate the Turnover Orders, sanctions based on Appellants' actions regarding the Turnover Orders constituted legal error.

L. It was Reasonable for Appellants to File Memoranda Specifically Requested by the Probate Court

One of the Probate Court's bases for sanctioning Appellants was Appellants' filing of its First Memorandum in Support of Motion to Reconsider on September 17, 2012, and Second Memorandum in Support of Motion to Reconsider on October 25, 2012, which related to Appellants' Motion to Reconsider the Turnover Orders. (R. pp. 58-59, 82-83). The Probate Court, however, specifically directed Appellants to file memoranda in support of the Motion to Reconsider the Turnover Orders; the Court even acknowledged this fact in its Order denying Appellants' Motion to Reconsider Sanctions. (R. pp. 82, 637, 640). Appellants' filing of two memoranda specifically requested by the Probate Court cannot be frivolous as a matter of law, and compliance with the Probate Court's directions cannot serve as the basis for sanctions as a matter of law. To hold that litigants can be sanctioned for complying with a court's instructions is legal error.

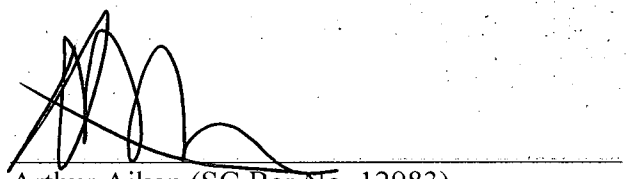
CONCLUSION

For the reasons set forth herein, the parties ask that this appeal be dismissed and that the Orders entered by the Probate Court on January 2, 2015 and July 13, 2015 be reversed, as well as the Orders of the Circuit Court entered April 28, 2016, and September 19, 2016.

All of which is respectfully submitted.

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO.: 2011-GC-40-00048
COUNTY OF RICHLAND	)	
	)	
IN THE MATTER OF:	)	
MARY BETH MOORE SJOBERG,	)	
	)	
PAULA S. SAINE,	)	
AS THE ATTORNEY-IN-FACT FOR	)	
MARY BETH MOORE SJOBERG,	)	
PRINCIPAL,	)	
AND AS THE DAUGHTER OF	)	
MARY BETH MOORE SJOBERG,	)	
	)	
PETITIONER.	)	

FILED
11 MAY 12 PM 5:36
AMY E. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER APPOINTING TEMPORARY GUARDIAN

THIS MATTER IS BEFORE THE COURT upon the filing of a Summons and Petition for Appointment of a Guardian for Mary Beth Moore Sjoberg on April 22, 2011 by Rita Bragg Cullum, attorney for Paula S. Saine, daughter of Mary Beth Moore Sjoberg. In her Petition, Paula S. Saineseeks appointment as Guardian and later requested the emergency appointment as Temporary Guardian due to her mother's mental deficiency. The Court has received a Doctor's Affidavit Regarding Capacity from Larry W. Nelson, M.D., as well as an Examiner's Report from the same physician, in which he states his medical opinion that Mary Beth Moore Sjoberg is an incapacitated person pursuant to S.C. Code Ann. § 62-5-101, 1976, as amended due to mental deficiency. The critical nature of Mrs. Sjoberg's present health, as indicated by Dr. Larry W. Nelson's report, and the testimony offered to the Court on May 9, 2011, as well as the need to make immediate health care decisions makes it necessary to make an emergency appointment before a permanent guardianship hearing can be held.

After a review of all pleadings and documents available at this time, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of this action, pursuant to S.C. Code Ann. § 62-5-102(a), 1976, as amended.
2. That Mary Beth Moore Sjobergis a resident of Richland County, South Carolina, therefore venue for this matter is proper pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended.
3. That based on the information provided to the Court, as well as the Doctor's Affidavits and Examiner's Reports submitted by Larry W. Nelson, M.D., Mary Beth Moore Sjobergis unable to make healthcare decisions for herself due to mental deficiency. Because of her condition, the Court finds that the appointment of a Temporary Guardian is necessary to ensure that Mary Beth Moore Sjoberg's healthcare needs are immediately provided for.
4. This Court has the authority to make an appointment of a temporary guardian pursuant to S.C. Code Ann. § 62-5-310, 1976, as amended. All of the requirements to make a temporary appointmentpursuant to S.C. Code Ann. § 62-5-310(A) have been met, including emergency preliminary findings that Mary Beth Moore Sjoberg is incapacitated made by Larry W. Nelson, M.D.and certified in writing to the Court, no guardian has been appointed previously, and the welfare of Mary Beth Moore Sjoberg requires immediate action. Accordingly, this Court finds that it is in Mary Beth Moore Sjoberg's best interest for Paula S. Saineto be appointed as her Temporary Guardian.
5. That based on a review of the Petitioner's criminal background checkand all other evidence available at this time, the Court concludes that Paula S. Saineis fit to serve as the Temporary Guardian, and should serve in that capacityfor a period not to exceed six (6) months.
6. That it would be in Mrs. Sjoberg's best interest for a Guardian *ad Litem* to be appointed as soon as possible.

THEREFORE, IT IS HEREBY ORDERED that:

A. Pursuant to S.C. Code Ann. § 62-5-310(A), 1976, as amended, Paula S. Saineis appointed as Temporary Guardian for Mary Beth Moore Sjoberg, with all powers and dutics as set forth in S.C. Code Ann. § 62-5-312, 1976, as amended, or as granted by an order of this Court, to include but not limited to the authority to make decisions about medical care, psychiatric care, living arrangements, and health care for Mary Beth Moore Sjoberg. Mary Beth Moore Sjobergis to be as involved as much as possible in the health care decision making process.

B. The authority of the Temporary Guardian includes all powers as Personal Representative under HIPAA. All medical providers, physicians, nurses, psychiatrists, counselors, therapists, psychologists, insurance companies, and any and all other individuals or entities providing treatment, care or maintaining medical records for Mary Beth Moore Sjoberg, whether individually or jointly, shall provide the Temporary Guardian with information, copies, and access to all such information, and the Temporary Guardian shall not be prevented access to information pertaining to Mary Beth Moore Sjobergbased upon HIPAA regulations.

C. The appointment of Paula S. Saine as the Temporary Guardian for Mary Beth Moore Sjobergshall not exceed a period of six (6) months, and shall automatically terminate upon the appointment of a Permanent Guardian.

D. There shall be a status hearing scheduled for no more than forty (40) days from the date of this Order, and the Guardian *ad Litem* and the Temporary Guardian shall be prepared to give a preliminary report and updates, respectively, at that time.

IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

May 12, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: MARY BETH MOORE SJOBERG, PAULA S. SAINE; AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG, PETITIONER.	)	IN THE PROBATE COURT CASE NO.: 2011-GC-40-00047

FILED
11 MAY 12 PM 5:36
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER APPOINTING TEMPORARY CONSERVATOR

THIS MATTER CAME BEFORE THE COURT on May 9, 2011, for a status hearing regarding the pending Conservatorship action for Mary Beth Moore Sjoberg. Present at the hearing were Paula S. Saine, daughter of Mary Beth Moore Sjoberg, and Rita Bragg Cullum, Attorney for Paula S. Saine. This matter was commenced on April 22, 2011, with the filing of a Petition for Appointment of Conservator and Protective Order by Rita Bragg Cullum on behalf of Paula S. Saine. In the Petition, Paula S. Saine requests that she be appointed as Conservator for her mother because she suffers from memory impairment, Alzheimer's dementia, physical limitations, and loss of the ability to live independently. Because the Court has not yet received all documentation necessary to schedule a hearing on the appointment of a Permanent Conservator, the Petitioner also requests that she be appointed as Temporary Conservator to immediately help with her financial affairsdue to mother's mental deficiency.

On May 9, 2011, a status hearing was held to address the need for the appointment of a Temporary Conservator. Prior to the hearing a sworn Doctor's Affidavit and Examiner's Reportcompleted by DoctorLarry W. Nelson, M.D.was filed with the Court indicating his medical

opinion that Paula S. Sainemeets the definition of an incapacitated individual pursuant to S.C. Code Ann. § 62-5-101, 1976, as amended, due to mental deficiency.

After considering all filed documents and information presented at the status hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of this action, pursuant to S.C. Code Ann. § 62-5-102(a), 1976, as amended.
2. That venue for this matter is proper in RichlandCounty, pursuant to S.C. Code Ann. § 62-5-403, 1976, as amended.
3. That based on the Doctor's Affidavit Regarding Capacity and Examiner's Report submitted by Larry W. Nelson, M.D., the Court concludes that Mary Beth Moore Sjoberg meets the definition of an incapacitated person, as defined by S.C. Code Ann. § 62-5-101(1), 1976, as amended, due to mental deficiency.
4. That due to Mary Beth Moore Sjoberg's incapacity, she is in need of a Temporary Conservator to manage her financial affairs. Although a Durable Power of Attorney is in existence naming the Petitioner as Agent for Mary Beth Moore Sjoberg, the Petitioner does not have possession of the original of such document, and this document has not been recorded. Thus, it cannot be utilized for the management of the financial affairs of Mary Beth Moore Sjoberg. As there is no fiduciary currently in place to make financial decisions for Mary Beth Moore Sjoberg, the Court concludes that the appointment of a Temporary Conservator is immediately necessary.
5. That the Court has been provided information in the form of a SLED Report and Credit Report pertaining to the Petitioner reflecting that she is responsible person, and the

testimony presented indicates that she has been assisting Mary Beth Moore Sjoberg in the management of her financial affairs for some time.

6. That pursuant to S.C. Code Ann. § 62-5-408, 1976, as amended, the Court concludes that Paula S. Saine is fit and proper to serve as the Temporary Conservator for Mary Beth Moore Sjoberg until a full hearing on the Petition can be held and a Permanent Conservator is appointed.

7. That the Court concludes that the Temporary Conservator should be specifically authorized to close, change, and/or reopen any bank accounts held in the name of Mary Beth Moore Sjoberg, and to execute any paperwork regarding the representative designation concerning any benefits or payments received by Mary Beth Moore Sjoberg, as needed to effectively manage Mrs. Sjoberg's financial affairs. This includes the authority to make any and all changes necessary to the representative payee designation or depository bank information required for benefits Mary Beth Moore Sjoberg is receiving from the Social Security Administration or any other entity or agency.

8. That no other individual, besides the Temporary Conservator named herein, should have access to the funds of Mary Beth Moore Sjoberg.

9. That it would be in Mrs. Sjoberg's best interest for a Guardian *ad Litem* to be appointed as soon as possible.

THEREFORE, IT IS HEREBY ORDERED that:

A. Paula S. Saine shall be appointed Temporary Conservator for Mary Beth Moore Sjoberg, with the limited authority to make only those financial decisions for Mary Beth Moore Sjobergthat are immediately necessary for her general care and welfare. This includes the power to make deposits and disbursements on Mary Beth Moore Sjoberg's behalf through bank accounts held at Bank of America or

any other financial institution holding assets in the name of Mary Beth Moore Sjoberg.

B. The Temporary Conservator shall investigate the existence of any and all assets owned by Mary Beth Moore Sjoberg and shall report those assets to the Court.

C. That the Temporary Conservator shall be authorized to close, change, and/or reopen any bank accounts held in the name of Mary Beth Moore Sjoberg. This includes the authority to make any and all changes necessary with regard to the representative payee designation or depository bank information required for benefits Mary Beth Moore Sjoberg is receiving from the Social Security Administration or any other entity or agency.

D. That the Temporary Conservator shall file a final accounting with this Court detailing all receipts and disbursements made on behalf ofMary Beth Moore Sjoberg. This accounting shall cover the period from the date of this Order, through the termination of her role as the Temporary Conservator.

E. There shall be a status hearing scheduled for no more than forty (40) days from the date of this Order, and the Guardian *ad Litem* and the Temporary Conservator shall be prepared to give a preliminary report and updates, respectively, at that time.

IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

May 12, 2011
Columbia, South Carolina

FILED

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
11 MAY 16 PM 5:11
COUNTY OF RICHLAND)
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C
IN THE MATTER OF:)
Mary Beth Moore Sjoberg)
A Minor or An Alleged Incapacitated Person)
)
CASE NUMBER: 2011 GC40 00047 &)
2011 GC40 00048)

ORDER APPOINTING GUARDIAN *AD LITEM*

As a Petition has been filed in this Court that requires the appointment of a Guardian *ad Litem* (hereinafter "GAL") for the above-named minor or alleged incapacitated person (hereinafter, "the AIP"), I hereby appoint Annie Bea Hightower, Esq. as GAL.

As it is the role of the GAL to investigate and recommend to the Court what is in the best interest of the minor or AIP, I direct that the GAL shall have access to all reports, records, and information relevant to the minor or AIP in order to ascertain the facts. The GAL is authorized to have access to records prepared or related to any medical and psychological treatment of the minor/AIP and to discuss the child or AIP's medical and psychological treatment with any appropriate medical or health care professionals. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(l)(l), the Health Insurance Portability and Accountability Act (HIPPA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

To that end, the GAL's investigation shall include the following:

1) Review of relevant mental health records and materials of the minor/AIP;
2) Review of relevant medical records of the minor/AIP;
3) Interviews with the minor/AIP with and/or without other persons present; and
4) Interviews with relatives, mental health providers, caseworkers and other persons who have been involved in caring for or treating the minor/AIP;
5) Given the requirements stated in 42 C.F.R. Part II with regard to the release of information concerning drug or alcohol treatment, the Court will execute an additional order if it is necessary for the GAL to access such records for the minor/AIP.

To facilitate reasonable investigation of information pertaining to the minor/AIP, the GAL shall have access to the minor/AIP within fourteen (14) days of the date of this Order, and to all records and information, including authorization to speak with interested persons; including but

not limited to the following sources: the minor's parent or legal guardian, law enforcement agencies, health care providers, mental health care providers, residential care providers; other care providers, the Department of Social Services (if applicable), the Department of Mental Health, the Department of Health and Human Services (if applicable), schools, school officials, vocational rehabilitation centers (if applicable), and any financial institution in which it is believed that there are funds on deposit belonging to the minor/AIP (if applicable).

The GAL is also entitled to receive copies of any existing Will, Power of Attorney, Health Care Power of Attorney and/or Living Will executed by the AIP.

In that the person serving as a GAL acts as the Court's agent, he or she is entitled to quasi-judicial immunity for acts performed within the scope of his or her duties as the GAL.

THEREFORE, IT IS HEREBY ORDERED that Annie Bea Hightower, Esq. is appointed as GAL in this matter and the above directives of the Court are to be followed.

AND IT IS SO ORDERED.

Jacqueline M. Bolton
Judge of Probate/Assoc. Judge of Probate or Clerk of Probate

May 16, 2011
Columbia, South Carolina

ACCEPTANCE OF APPOINTMENT

I ACCEPT THE APPOINTMENT: Annie Bea Hightower
(Signature)

Printed Name: A. Bea Hightower

Address: 2231 Devine Street
Suite 201 Columbia, SC 29205

Phone Number: 803-799-5205

E-mail: bea@aikenandhightower.com

This 12 day of May, 2011

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN RE: Mary Beth Moore Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Petitioner vs. Mary Beth Moore Sjoberg, an Alleged Incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine, Respondent	)	IN THE PROBATE COURT Case Nos.: 2011-GC-40-00047 & 2011-GC-40-00048 **ORDER CONFIRMING ONGOING INCAPACITY and ORDER REGARDING MOTION TO STRIKE APPEARANCE OF COUNSEL**

FILED
2011 DEC -2 PM 2:23
MARY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT pursuant to the appointment of Paula S. Saine ("Mrs. Saine") as Temporary Guardian and Temporary Conservator for her mother, Mary Beth Moore Sjoberg ("Mrs. Sjoberg"), an incapacitated adult. This matter was commenced on April 22, 2011, and Mrs. Saine was appointed in her temporary capacities on May 12, 2011. On October 18, 2011, counsel for the Temporary Guardian and Temporary Conservator filed a Notice of Motion and Motion to Strike Appearance of Counsel, Pope D. Johnson, III's ("Mr. Johnson") representation of Mary Beth Moore Sjoberg.

A hearing was held on October 26, 2011 on Petitioner's Motion to Strike the Appearance of Counsel regarding Mr. Johnson, who appeared in this matter on behalf of Mary Beth Moore Sjoberg on June 22, 2011. All interested parties either received or waived notice of the hearing. Present at the hearing were the Petitioner, Mrs. Paula S. Saine; Larry W. Nelson, M.D. psychiatrist of Mary Beth Moore Sjoberg ("Dr. Nelson"); Ms. Lori Sjoberg, daughter-in-law of Mrs. Sjoberg;

Ms. Delores Williams, friend and sitter for Mrs. Sjoberg; Ms. Essie Gause, sitter for Mrs. Sjoberg; attorneys for the Petitioner, Rita Bragg Cullum and Shaun C. Blake; the Court-appointed attorney and Guardian ad Litem for Mrs. Sjoberg, A. Bea Hightower; and Pope D. Johnson, III who asserts that he was retained by Mrs. Sjoberg.

The Court received the sworn expert testimony of Dr. Nelson, who testified that Mrs. Sjoberg has possessed a permanent incapacity since the date of his original Affidavit regarding capacity dated May 3, 2011 due to mental deficiencies, including mild dementia and very serious memory loss. Additionally, the Court received sworn testimony from Mr. Johnson, Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause regarding their interactions with Mrs. Sjoberg since June of 2011. No one other than Dr. Nelson was designated as an expert for the purpose of these proceedings. The Court also considered the previously submitted medical evaluation and report of Erik Crook, M.D., finding that Mary Beth Moore Sjoberg met the definition of an incapacitated person under S.C. Code Ann. §62-5-101(1), 1976, as amended, and that she is in need of care. Without objection, the report of William Brannon, M.D. ("Dr. Brannon") was also considered by the Court. The Guardian ad Litem, A. Bea Hightower ("Ms. Hightower"), thoroughly investigated all issues presented in this matter and stated that she agrees that Mrs. Sjoberg has remained an incapacitated adult since her initial assessment for these proceedings, and that Mrs. Sjoberg is in need of the care of a legal guardian.

Having reviewed the record and having heard the testimony at the hearing, this Court makes the following:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction over this case and personal jurisdiction over the parties, and venue is proper in this Court.

2. As a part of temporary proceedings, this Court found that Mrs. Sjoberg met the statutory definition of incapacity on May 9, 2011. Accordingly, this Court has previously adjudicated that Mrs. Sjoberg is "impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that [s]he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning [her] person or property." S.C. Code Ann. § 62-5-101(1), 1976, as amended.

3. Paula S. Saine was appointed by this Court on May 12, 2011, to act as both temporary Conservator and Guardian for Mary Beth Moore Sjoberg for a period of at least six (6) months. The temporary conservatorship and guardianship are still ongoing.

4. Mrs. Saine has never retained Mr. Johnson. On the contrary, Mrs. Saine's counsel has advised Mr. Johnson in writing and on Mrs. Saine's behalf, and pursuant to her power under S.C. Code Ann. § 62-5-312, 1976, as amended, that it is the position of the temporary conservator and guardian that Mr. Johnson has not been retained on behalf of Mrs. Sjoberg and that he should cease all work on behalf of Mrs. Sjoberg. Mr. Johnson has disregarded these instructions.

5. Mrs. Sjoberg did not initially approach Mr. Johnson to retain him as counsel. Rather, on June 22, 2011, Mr. Johnson was first contacted by Mrs. Sjoberg's former counsel, Mr. Robert J. Thomas, regarding the representation of Mrs. Sjoberg. At or around that time, Mr. Johnson was advised that Mrs. Sjoberg had already been adjudicated incompetent by this Court, that Mrs. Saine was the temporary guardian and conservator for Mrs. Sjoberg, and that Mrs. Hightower was acting as Guardian ad Litem for Mrs. Sjoberg.

6. Mr. Johnson does not have an attorney-client relationship with Mrs. Sjoberg that pre-dates this Court's ruling on her incapacity or the appointment of Mrs. Saine and Ms.

Hightower.

7. A copy of Mr. Johnson's Agreement to Provide Legal Services ("Retainer Agreement") with Mrs. Sjoberg is attached to the instant Motion. Mr. Johnson testified that he was not present on June 23, 2011 when Mrs. Sjoberg purportedly executed the Retainer Agreement. No party has challenged the fact that the signature on the Retainer Agreement is Mrs. Sjoberg's signature. However, no evidence was presented that Mrs. Sjoberg read the Retainer Agreement, received any explanation regarding the Retainer Agreement, or possessed any understanding of the Retainer Agreement at the time it was signed. Moreover, no evidence was presented regarding Mrs. Sjoberg's mental condition on June 23, 2011 besides Dr. Nelson, whose testimony establishes that Mrs. Sjoberg has remained impaired by reason of mental deficiency to the extent that she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person or property since May 3, 2011. The undersigned provides substantial weight to Dr. Nelson's testimony, which is supported by the conclusions of Dr. Crook and the weight of the lay testimony at the hearing. The undersigned gives greater weight to the opinions of Dr. Nelson and Dr. Crook due to their standing as the long-term treating physicians of Mrs. Sjoberg.

8. At that time of the execution of the Retainer Agreement, as a matter of law Mrs. Sjoberg had been adjudicated as a person who was incapacitated pursuant to the definition of incapacity in the State of South Carolina. Mrs. Sjoberg's lack the capacity included the absence of contractual capacity to enter into a contract for legal representation with Mr. Johnson, in exchange for Mr. Johnson's fees. Both Mr. Thomas and Mr. Johnson were aware of this Court's finding of incapacity regarding Mrs. Sjoberg.

9. Dr. Brannon's report failed to address contractual capacity. Rather, his analysis focuses on the lesser standard of testamentary capacity, which is not at issue in this motion.

10. Dr. Nelson's testimony establishes that Mrs. Sjoberg is able to mask at times the true extent of her impairment due to her education and experience as an English teacher. Additionally, Dr. Nelson's testimony demonstrates that Mrs. Sjoberg at times confabulates in order to fill gaps in her memory and understanding, and this practice further masks the extent of her deficiency to those who lack familiarity with the events or beliefs Mrs. Sjoberg describes.

11. Dr. Nelson's testimony establishes that Mrs. Sjoberg, although she may be capable of understanding an issue at the time it is explained to her, is highly susceptible to influence, suggestion, and leading questions by those who are around her at that instant. Mrs. Sjoberg picks up and responds to cues from those who are communicating with her. However, even in the course of the same day, Mrs. Sjoberg may lose recollection and understanding of earlier events, statements, and beliefs.

12. Dr. Nelson's testimony and the weight of the lay testimony at the hearing established that Mrs. Sjoberg can become acutely depressed when she is faced with her loss of independence. Specifically, the medical directive that prevents Mrs. Sjoberg from driving causes Mrs. Sjoberg much frustration, and she has confabulated events and otherwise placed blame on Mrs. Saine when faced with her inability to drive. Recently, Mrs. Sjoberg confabulated a theft of her vehicle by Mrs. Saine which never actually occurred, and she reported this confabulation to the police.

13. Dr. Nelson's testimony establishes that Mrs. Sjoberg, on more than one occasion, has demonstrated a failure to understand the nature of the legal proceedings that are taking place. Mrs. Sjoberg has also demonstrated a failure to understand who Mr. Johnson is or that he is acting as her counsel. Mrs. Sjoberg has often expressed the desire that the Petitioner, Mrs. Saine, be her caregiver and that she does not desire to oppose the current legal proceedings.

14. The testimony of Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause, as well as the statements of Ms. Hightower as Guardian ad Litem, support the conclusion that Mrs. Sjoberg does not know who Mr. Johnson is or that he is acting on her behalf as legal counsel. The testimony of these witnesses and the report of Ms. Hightower also demonstrate that Mrs. Sjoberg does not desire to oppose the current legal proceedings.

15. Mr. Johnson has testified that, when he is present with Mrs. Sjoberg, he believed that Mrs. Sjoberg has understood the attorney-client relationship between them and that she does not desire to have her social life controlled by Mrs. Saine. However, Mr. Johnson acknowledged that he lacks medical education to form the basis of any opinion regarding Mrs. Sjoberg's level of understanding. In light of Dr. Nelson's testimony, including his belief that those who communicate with Mrs. Sjoberg are not necessarily able to discern the underlying clinical difficulties she is experiencing, the Court gives greater weight to the body of evidence presented at the hearing that demonstrates that Mrs. Sjoberg has remained incapacitated within the meaning of S.C. Code Ann. § 62-5-101(1) since at least May 3, 2011 and that Mrs. Sjoberg has not possessed the ability to understand in a meaningful way the nature, scope and effect of her alleged engagement with Mr. Johnson during the time of the alleged engagement by Mr. Johnson. Gaddy v. Douglass, 359 S.C. 329, 345, 597 S.E.2d 12, 20 (Ct.App.2004); In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854, 857 (Ct.App.2001).

16. The Court finds and concludes that Mrs. Sjoberg has lacked contractual capacity at least since her assessment in May of 2011 and during the course of Mr. Johnson's alleged engagement with her, and that she continues to possess a permanent incapacity due to mental deficiency. Because Mrs. Sjoberg was previously adjudicated to be incapacitated prior to Mr. Johnson's involvement with her, and because of the absence of contractual capacity during the

course of his involvement with her, Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship.

17. As an additional ground in support of this ruling, the Court further finds that, as Mr. Johnson possessed knowledge of this Court's predetermination of incapacity and of Mrs. Sjoberg's mental incompetency, any contractual engagement between Mrs. Sjoberg and Mr. Johnson is void. Shepard v. First Am. Mortg. Co., 289 S.C. 516, 518, 347 S.E.2d 118, 119 (Ct. App. 1986).

18. However, based on the testimony provided by Mr. Johnson, the Court finds that Mr. Johnson has acted in good faith throughout his involvement in this matter and has attempted to pursue what he believes to be the best interests of Mrs. Sjoberg. The Court does not find that Mr. Johnson has intentionally violated any ethical obligation with respect to Mrs. Sjoberg. The Court further finds that Mr. Johnson should be paid for his services to Mrs. Sjoberg and authorizes Mr. Johnson to submit an affidavit and a detailed statement of costs and legal fees incurred during the time he has represented Mrs. Sjoberg, so that the Court can determine the fees and costs for which he is entitled to payment.

19. The Court further finds and concludes that Ms. Hightower should remain as Guardian ad Litem and continue in her responsibilities on behalf of Mrs. Sjoberg.

20. The Court finds that, because incapacity is no longer at issue, an attorney may not be needed for Mrs. Sjoberg. However, out of an abundance of caution, the Court finds that an attorney should be appointed to conduct an investigation into Mrs. Sjoberg's interests. If that attorney feels after investigation of the matter that Mrs. Sjoberg's interests are adequately protected solely with the appointment of the Guardian ad Litem and that his or her services are not needed to protect Mrs. Sjoberg, then that attorney will be relieved as counsel.

WHEREFORE, IT IS HEREBY ORDERED that:

A. Mary Beth Moore Sjoberg is an incapacitated adult pursuant to the definition in S.C. Code Ann. § 62-5-101(1), 1976, as amended, at she has been at least since this Court executed its Order on May 3, 2011. Therefore, a permanent guardian and conservator shall be appointed for Mrs. Sjoberg once mediation and any other necessary actions in this matter have been completed.

B. Mr. Johnson shall cease his representation of Mrs. Sjoberg, and his appearance as counsel of record shall be stricken from the docket.

C. An attorney shall be appointed for Mrs. Sjoberg to conduct an investigation into Mrs. Sjoberg's interests.

D. All Motions filed by Mr. Johnson that are currently pending shall be held in abeyance until reviewed by the attorney who is appointed to conduct an investigation into Mrs. Sjoberg's interests.

E. Mr. Johnson is entitled to submit an affidavit and detailed statement of the costs and legal fees incurred during his involvement with Mrs. Sjoberg, so that the Court may determine a reasonable award of attorneys' fees for his efforts on behalf of Mrs. Sjoberg.

F. The Guardian ad Litem, A. Bea Hightower, Esq. is entitled to a reasonable fee for the legal services provided to Mrs. Sjoberg in this matter, and once Ms. Hightower has submitted her invoice for review and approval by the Court a separate Order will be issued authorizing Mrs. Saine to pay this fee from the assets of Mary Beth Moore Sjoberg.

AND IT IS SO ORDERED.

Jacqueline D. Belton
Associate. Probate Judge

December 2, 2011
Columbia, South Carolina
Nunc Pro Tunc to October 29, 2011

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048
IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	)	ORDER FOR RELEASE OF CLIENT DOCUMENTS

2012 JUL 31 PM 12:41
AMY E. CULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER COMES BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

A conference regarding the status of the permanent Guardianship and Conservatorship appointments of Ms. Saine was held July 13, 2012, in chambers. Present at the status conference were Rita Bragg Cullum and A. Bea Hightower. At the status conference the Court discussed the payment of attorneys' fees and Guardian *ad Litem* fees, the estate planning documents of Ms. Sjoberg, and the status of the Guardianship and Conservatorship of Ms. Sjoberg going forward.

Ms. Saine is the Attorney-in-Fact for Ms. Sjoberg under a Healthcare Power of Attorney dated October 14, 2010, and a Durable Power of Attorney, although never recorded, executed by

Ms. Sjoberg. Ms. Saine was appointed as the Temporary Guardian and Temporary Conservator for Ms. Sjoberg by Order of this Court dated May 12, 2011. That this Court expects that Ms. Saine's temporary appointments will become permanent appointments.

That this Court is informed and believes that certain estate planning documents executed by Ms. Sjoberg are currently in possession of the law firm of Rogers, Townsend & Thomas, PC. That the attorney and Guardian *ad Litem* for Ms. Sjoberg informed the Court that she has contacted Robert J. Thomas, former long-time attorney for Ms. Sjoberg, and attorney Amy Landers May, both of Rogers, Townsend & Thomas, PC of this request. The attorney for Ms. Saine and the attorney and Guardian *ad Litem* of Ms. Sjoberg have requested that these certain estate planning documents and any and all documents pertaining to a rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, be turned over to Ms. Saine as the Temporary Guardian and Conservator for Ms. Sjoberg and that this Court authorize Rogers, Townsend & Thomas, PC to produce these certain documents. After considering the request of the attorney for Ms. Saine and the attorney and Guardian *ad Litem* for Ms. Sjoberg, the Court finds that the request is appropriate and that in order for the Temporary Guardian and Conservator to fulfill her fiduciary duties to her ward, it is in the best interests of Ms. Sjoberg for her Attorney-in-Fact and Temporary Guardian and Conservator to be in possession of her estate planning documents and the rental property agreement.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will

and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as the Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas.

AND IT IS SO ORDERED:

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 31, 2012
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 AMENDED ORDER FOR RELEASE OF CLIENT DOCUMENTS

FILED
2012 AUG 24 PM 3:35
AMY A. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER CAME BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

An Order was issued by this Court on July 31, 2012 in which the law firm of Rogers, Townsend & Thomas, PC (hereinafter "RTT") was authorized to produce and release and was directed to immediately produce and release any and all estate planning documents, not just final or most recent versions, of estate planning documents executed by Mary Beth Sjoberg. The documents included, but were not limited to, Last Will and Testaments; trusts, revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy,

including copies in digital format or electronically stored. Reference is made to the July 31st Order for the background concerning this matter. The Order further required that whoever had actual possession of the requested documents, whether they were in the possession of RTT and/or attorney Robert J. Thomas, turn the documents over to Paula S. Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg

That this Court is informed and believes that some of the requested estate planning documents may have been turned over to Ms. Hightower, as attorney and Guardian *ad Litem* for Ms. Sjoberg, and/or to Paula Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg. However, the Court was copied on a letter sent by Mr. Thomas to Ms. Hightower which stated that some documents would be turned over, but expressed concerns about the general nature of the request and concerns about violating attorney-client privilege by turning over other materials from his files. Given that concern, this Court is amending its prior order to clarify what materials are being requested from the files of attorney Robert J. Thomas and/or RTT. Though some documents may have already been turned over by Mr. Thomas, for the sake of clarity this Amended Order will restate all of the documents that are stated in the previous order and will further clarify to whom remaining documents are to be given.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all actual estate planning documents, not just final or most recent versions of those estate planning documents executed by Mary Beth Sjoberg, including, but not limited to: Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and

business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

August 24, 2012
Columbia, South Carolina
Nunc Pro Tunc to July 31, 2012

FILED
12 OCT 18 AM 9:51
RICHLAND COUNTY, S.C.
PROBATE JUDGE

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	Case No. 2011-GC-40-00047
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00048
IN THE MATTER OF: MARY BETH MOORE SJOBERG,	)	
PAULS S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	)	**ORDER RELEASING DOCUMENTS AND PROTECTIVE ORDER**
Petitioner.	)	

Attorney Robert P. Wood of Rogers Townsend & Thomas P.C. (RTT) has requested, via email, a number of documents from the files in the referenced actions. Neither Mr. Wood nor RTT is counsel of record for any party to this action[1]. After consultation with counsel of record, this Court exercised its discretion to release certain file materials to Mr. Wood, which were receipted by Mr. Wood on September 25, 2012.

The probate courts of this State are required to maintain records regarding proceedings involved protected persons and are required to furnish copies of "any other record or paper filed or recorded." S.C.Code Ann. Section 62-1-305 (2009)[2], 1976, as amended. Probate courts are courts of record. Section 14-23-1120. Copies of documents from probate court files of protected persons may be released to individuals on request. Section 14-23-620[3].

[1] Robert J. Thomas, a member of RTT, previously represented Mary Beth Moore Sjoberg in connection with estate planning and other matters, before she was determined to lack capacity. RTT has not filed any pleading with this Court requesting that a determination be made that it is an interested party in this matter.

[2] There are multiple provisions of the South Carolina Code that address the handling of probate court files. *See* 14-23-620 and compare 62-1-305.

[3] Many of the older provisions of Title 14, Chapter 23 have been repealed by subsequent legislative acts. *See e.g.*, former Section 14-23-610, repealed by 1991 Act No. 85, Section 1, effective May 23, 1991; former Section 14-23-650, repealed by 1997 Act No. 152, Section 31, effective June 11, 1997. The Code Commissioner has noted several other provisions as being repealed by implication from subsequent legislative acts. *See* former Sections 16-

However, many of the documents maintained in the Court's files in guardianship and conservatorship matters are of a private, personal and sensitive nature, the public disclosure of which could reveal confidential medical information or private financial information that if released could be harmful to the protected person or subject him to exploitation. The Court believes it has an obligation, based on the duties imposed upon it by the Probate Code, to make an individual examination when documents are requested by non-parties to the action and to exercise its discretion to determine whether the requested documents may be released and, if so, under what circumstances and with what protections, if any, attached to the disclosure. *See Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219 (1991).

Even the S.C. Freedom of Information Act (FOIA), S. C. Code Ann. Section 30-4-10, et seq., 1976, as amended, which mandates the disclosure of anything determined to be a public record, recognizes that there are certain records, including certain medical records, medical reports, and financial records that are exempt from disclosure. Section 30-4-20(c). In addition, FOIA specifically addresses matters exempt from disclosure, and states that a public body may, but is not required to disclose "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." See Section 30-4-40(a)(2). Therefore, the fact that a document is contained in a file maintained by a court does not necessarily make it a public record, available to disclosure to persons not involved in the matter. Section 30-4-20(c). Section 62-1-103 makes clear that principals of law and equity that are not displaced by Title 62 of the South Carolina Code remain applicable to probate court proceedings. Thus, a determination of whether certain documents contained in the files of protected persons is within the discretion of this Court.

23-630 and 640, noted as "repealed by implication by 1976 Act No. 690, Article V, Section 13." It appears that Section 14-23-620 remains a valid code section.

The Court takes note of the fact that the S. C. Supreme Court has expressed concern about the content of court files, noting that "the ready availability of these documents raises significant privacy concerns." 2007-AO-0813 (Administrative Order August 13, 2007). For that reason, the Supreme Court has ruled that documents that may be of record at the trial court must be redacted before they are filed with an appellate court in order to protect personal information of litigants. *Id*

The very nature of the files maintained in protective proceedings requires that the Court make an *ad hoc* review of the documents requested by non-parties, including an analysis of the protected persons' right to privacy and the risk of possible harm that may be caused by unqualified release of certain documents regarding a protected person from the court file. The General Assembly has specifically tasked all public entities with the obligation to jealously guard the release of confidential information from its files. S.C.Code Ann. Section 30-2-300 – 330.

An examination of the open records statute applying to the probate courts in this state, FOIA, and the S. C. Supreme Court's Administrative Order make it clear that it is necessary to strike a balance in considering requests for the release of documents from a probate court file. Accordingly, this Court has a process in place for review by the Court of requests by non-parties for the release of documents from guardianship and conservator files. Non-parties are required to fill out a request form setting forth what documents they are requesting from a file and, in every case, a probate court judge makes an individual determination whether the requested materials will be released to the requesting non-party. This Court is unaware of any appellate court reviewing the process employed by this Court, or of any administrative determination by the Supreme Court or South Carolina Court Administration that finds this Court's process invalid in any way.

In determining to release certain materials to Mr. Wood, the Court made a review of the contents of both files in these matters, and consulted with the parties to this action. After consultation with the parties, who objected to the release of medical and financial information in the file, and exercising its independent discretion and duty, the Court determined that release of certain file materials to Mr. Wood and RTT could be made. In so doing, the Court considered the continuing obligation of confidentiality owed by Mr. Wood and RTT to its former client, Mary Beth Moore Sjoberg. The Court did not release certain materials contained within the Court's files.

This Order is issued to establish the basis for the Court's decision to withhold certain confidential information from disclosure to Mr. Wood and RTT. Served upon Mr. Wood and RTT, with a copy of this order, is a CD containing electronic copies of all materials contained within the subject files that this Court has determined, in its discretion, may be disclosed to them. Copies of the CD are being provided to the parties to this action, including the duly-appointed attorney and guardian *ad litem* for Mary Beth Moore Sjoberg.

In releasing these documents to Mr. Wood and RTT, the Court reminds Mr. Wood and RTT that these documents are released to them in their capacity as former counsel for the protected person, and the documents are therefore confidential, such that disclosure of the documents or information contained therein is governed by applicable rules regarding the attorney-client relationship and client confidentiality. The documents may not be used for any purpose other than furthering the interests of the protected person, their former client.

This Order is issued this date *nunc pro tunc* to September 25, 2012.

Jacqueline D. Belton

October 18, 2012
Columbia, South Carolina

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

Nunc pro tunc to September 25, 2012

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Case No. 2011-GC-40-00047**
COUNTY OF RICHLAND	)	**Case No. 2011-GC-40-00048**
IN THE MATTER OF:	)	
MARY BETH MOORE SJOBERG,	)	
	)	
PAULA S. SAINE,	)	**ORDER DENYING MOTION**
AS THE ATTORNEY-IN-FACT FOR	)	**TO RECONSIDER**
MARY BETH MOORE SJOBERG,	)	
AND AS THE DAUGHTER OF	)	
MARY BETH MOORE SJOBERG,	)	
	)	
Petitioner.	)	
	)	

FILED
12 DEC -4 PM 3:26

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File, on August 30, 2012, by Robert P. Wood (hereinafter "Mr. Wood") of Rogers Townsend & Thomas, PC (hereinafter "RTT" or "the Firm"). The Motion was filed after the Firm's receipt of an Order dated July 31, 2012 which directed RTT to turn over any and all estate planning documents executed by Mary Beth Moore Sjoberg (hereafter "Mrs. Sjoberg") to Paula S. Saine (hereinafter "Ms. Saine"), as Attorney-in-Fact, Temporary Guardian and Temporary Conservator for Mrs. Sjoberg. Thereafter, an Amended Order for Release of Client Documents was executed on August 24, 2012 and sent to RTT to clarify the specific documents the Firm was directed to produce and to who the documents were to be delivered.

Mr. Wood has asked this Court to reconsider its Orders of July 31, 2012 and August 24, 2012 requiring the Firm to turn over specific Estate Planning documents, based on a claim of attorney-client privilege and work product doctrine. In addition to his Motion to Reconsider, Mr. Wood has also submitted two Memorandums in Support of his Motion, filed on September 17,

2012 and October 26, 2012, respectively. Also, A. Bea Hightower (hereinafter "Ms. Hightower"), Guardian *ad Litem* for Mrs. Sjoberg, filed a memorandum in Opposition to Motion to Reconsider, regarding this matter.

FACTUAL AND PROCEDURAL BACKGROUND

This matter initially came before the Court as a result of the filing of Summons and Petitions for Finding of Incapacity and Appointment of Guardian and for Protective Order and Appointment of Conservator for Mrs. Sjoberg, which were filed on April 22, 2011 by Rita Bragg Cullum (hereinafter "Ms. Cullum"), attorney for Ms. Saine. Ms. Saine is the daughter of Mrs. Sjoberg. After the initial proceedings, which were held on May 9, 2011, there was a preliminary finding of incapacity, pursuant to S.C. Code Ann. §62-5-101(1), 1976, as amended, based on a Doctor's Affidavit Regarding Capacity and an Examiner's Report from Larry W. Nelson, M.D. The language of the May 12, 2011 Orders, which were issued pursuant to the May 9th hearing, made it clear that the appointments were temporary and that further proceedings would be held for the Court to receive a preliminary report from the Guardian *ad Litem* and to receive updates regarding these matters.

Accordingly, a Status Hearing was scheduled for June 22, 2012 regarding both matters. On May 16, 2011 a Notice of Status Hearing regarding the June 22nd hearing was mailed to Ms. Saine, Ms. Hightower, and Ms. Cullum. On May 17, 2011 the same Notice of Status Hearing regarding the June 22nd hearing was mailed to Mrs. Sjoberg and to Robert J. Thomas (hereinafter "Mr. Thomas). The Court was notified of a conflict, and on May 18, 2011 a Notice of Rescheduled Status Hearing, which was then set for June 21, 2011, was mailed to Ms. Saine, Ms. Hightower, Ms. Cullum, Mrs. Sjoberg, and Mr. Thomas. Thereafter, the Court was again notified of a conflict, and on May 26, 2011 another Notice of Rescheduled Status Hearing, which was re-set for July 11, 2011, was mailed to Ms. Saine, Ms. Hightower, Ms. Cullum, Mrs. Sjoberg, and Mr. Thomas.

On June 6, 2011 Ms. Cullum, by way of her firm's courier, personally served Angela Kirby, Esquire, Robert J. Thomas, Esquire, and Amy Landers May, Esquire, at that time all attorneys with RTT, with the Summons and Petitions for Finding of Incapacity and Appointment of Guardian and for Protective Order and Appointment of Conservator, for Mrs. Sjoberg. On June 23, 2011 Pope D. Johnson III (hereinafter "Mr. Johnson") entered his appearance in both matters. Based on a conflict with Mr. Johnson's previously planned vacation, on July 6, 2011 another Notice of Rescheduled Status Hearing, which was then re-set for July 27, 2011, was mailed to Ms. Saine, Mrs. Sjoberg, Ms. Hightower, Mr. Johnson, Mr. Thomas, and Ms. Cullum. On July 19, 2011 Mr. Johnson filed Answers on behalf of Mrs. Sjoberg regarding both Petitions. The Certificates of Service for both Answers indicate that Mr. Johnson's Answers on behalf of Mary Beth Moore Sjoberg were sent to the following: Rita Bragg Cullum, Esquire, Ellis Lawhorne & Sims, P.A.; A. Bea Hightower, Aiken & Hightower, P.A.; and Angela M. Kirby, Esquire, Rogers Townsend & Thomas.

On July 27, 2011 the Status Hearing was finally held, at which counsel and all parties, except Mrs. Sjoberg, were present. As indicated, Mr. Johnson was present as counsel for Mrs. Sjoberg and Ms. Hightower was present as her Guardian *ad Litem*. Neither Mr. Thomas nor anyone else from RTT was present, though Mr. Thomas was sent notice of the proceedings. Mr. Johnson disputed incapacity, but informed the Court at the July 27th hearing that Mrs. Sjoberg told him that she did not want him to contest the appointment of Ms. Saine as her Guardian and Conservator. Ms. Hightower indicated that she visited Mrs. Sjoberg on three occasions before the hearing. She further indicated that while Mrs. Sjoberg had initially wanted to challenge the allegation of incapacity, during the second and third visits Mrs. Sjoberg indicated that Ms. Saine was the only one who was capable of taking care of her and that she was willing to let her do so. Mrs. Sjoberg's major concern was not being able to spend time alone with her male friend and feelings that Ms. Saine had significantly encroached on her independence. Even though Mr. Johnson disputed incapacity, he asked the Court

for time to do additional investigation regarding Mrs. Sjoberg's capacity, in order to determine if she could instruct him not to contest the Petitions filed by Ms. Saine.

At Mr. Johnson's request, William L. Brannon, M.D., of Brannon Neurological Consultants, LLC, examined Mrs. Sjoberg on August 23, 2011. Dr. Brannon's report was filed with the Court on September 6, 2011. The report noted memory issues; Mrs. Sjoberg's statement to Dr. Brannon indicating that "her daughter pays all her bills and she is satisfied with that"; that Mrs. Sjoberg had "a dementing illness consistent with Alzheimer (sic) Disease"; and notation of clinical observations that related to the individual elements of testamentary capacity, which may or may not have been present. The issue of testamentary capacity is not one that this court has ever been asked to rule on. Dr. Brannon's report made no mention of contractual capacity, which is well-recognized in South Carolina as the standard that would be relevant to Mrs. Sjoberg's capacity to retain and instruct Mr. Johnson regarding his representation, as well as the standard of capacity that would be needed in order for Mrs. Sjoberg to be able to execute powers of attorney.

Subsequent to receiving Dr. Brannon's report, the Court e-mailed Mr. Johnson, with copies to Ms. Hightower and Ms. Cullum, asking for clarification as to Mr. Johnson's position regarding whether he would be able to abide by his client's instruction to drop these matters. On September 16, 2011, Mr. Johnson wrote to the Court and indicated that he, Ms. Hightower, and Ms. Cullum had not been able to reach any agreement regarding Mrs. Sjoberg's capacity or the extent of her incapacity, if any. In his letter Mr. Johnson asked for a status conference, and the Court responded to him, with copies to Ms. Hightower and Ms. Cullum, indicating that in order to move forward a status hearing should be scheduled to determine if Mrs. Sjoberg had contractual capacity when she made her statement to Ms. Hightower and gave instructions to Mr. Johnson to drop these matters, or at any other time that documents were executed by Mrs. Sjoberg. Accordingly, on September 23, 2011, Notice of Status Hearing, which was set for October 26, 2011, was mailed to Ms. Saine, Mrs.

Sjoberg, Ms. Hightower, Mr. Johnson, and Ms. Cullum. This was the first hearing for which Mr. Thomas was not sent notice, as Mr. Johnson had previously entered his appearance, filed Answers, and appeared in court on behalf of Ms. Sjoberg.

On October 26, 2011, the hearing was held to address only the issue of Mrs. Sjoberg's capacity. Dr. Nelson testified as an expert in those proceedings, and the Court also received sworn testimony from Mr. Johnson, Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause regarding their interactions with Mrs. Sjoberg from June of 2011 through the date of the hearing. The Court also considered the previously submitted medical evaluation and report of Erik Crook, M.D., finding that Mrs. Sjoberg met the definition of an incapacitated person under S.C. Code Ann. §62-5-101(1), 1976, as amended, and that she was in need of care. Without objection, the report of William L. Brannon, M.D. was also considered by the Court. Ms. Hightower thoroughly investigated all issues presented and agreed that Mrs. Sjoberg had remained an incapacitated adult since the initial assessment in May of 2011, and that Mrs. Sjoberg was in need of someone to make health care decisions and to manage her assets and financial affairs.

Dr. Nelson's testimony confirmed that Mrs. Sjoberg met the definition of incapacity at the time of his initial examination on May 3, 2011, and that she continued to meet the definition of incapacity at the time of the October 2011 hearing, as defined in S.C. Code Ann. § 62-5-101, 1976, as amended, due to mental deficiency. Based on all of the available medical evidence the Court ruled from the bench regarding the issue of capacity, finding that Mrs. Sjoberg was incapacitated. A proposed order was circulated among counsel for the parties, and while awaiting feedback the Court found that its ruling from the bench regarding Mrs. Sjoberg's incapacity was sufficient to extend the appointment of Paula S. Saine as Temporary Guardian. More detail regarding this proceeding is contained in the Court's Order Confirming Ongoing

Incapacity and Order Regarding Motion to Strike Appearance of Counsel, dated December 2, 2011.

Paula S. Saine continues to act as Temporary Guardian and Temporary Conservator for Mary Beth Moore Sjoberg, with the most recent order extending the temporary guardianship filed on November 14, 2012, *Nunc Pro Tunc to November 11, 2012.* The temporary conservatorship, established by the May 12, 2011 Order, was based on Dr. Nelson's initial finding of incapacity on May 3, 2011. Mrs. Sjoberg's incapacity was confirmed at the October 26, 2011 hearing, which necessitated continuing the temporary conservatorship (and the guardianship) until the mandatory mediation required pursuant to the Probate Court Mediation Rules could be scheduled and held. However, events subsequent to that time may have made mediation unnecessary.

JURISDICTION

Mr. Wood argues that the Court does not have personal jurisdiction over Mrs. Sjoberg, because she was never personally served with the Summons and Petitions in these cases. The issue of jurisdiction is one to be resolved between Rogers Townsend & Thomas and Ms. Cullum; it was never raised during these proceedings and is not before the Court at this time, though Mr. Wood seeks to use the issue as a basis for not turning over documents.

However, the purpose of the extensive factual and procedural background in the previous section of this Order is, in part, to make clear the numerous opportunities on the part of Mr. Thomas and RTT, as well as on the part of Mr. Johnson, to raise this issue during the litigation of these cases. Mr. Thomas and two other attorneys at RTT were personally served with the Summons and Petitions in both matters and Mr. Thomas received notice of every proceeding that

was scheduled or re-scheduled after the May 9, 2012 hearing. That included the Notice of Hearing that was mailed to all attorneys and parties regarding the July 27, 2012 review hearing. However, Mr. Thomas never appeared in court or by way of a response to any pleading filed in these matters, and he never sought to raise the issue of personal jurisdiction. In addition, Mr. Johnson filed Answers in both matters, and he never raised the issue of any jurisdictional defects in either Answer or in any subsequent pleadings. As previously noted RTT was served with a copy of the Answers by mailing them to Ms. Kirby, so the Firm was aware at the time that Mr. Johnson did not assert any jurisdictional defects with regard to these matters.

Finally, no appeal was filed in the Circuit Court regarding any of the numerous Orders filed in these matters, and those Orders are now the law of the case. Accordingly, for purposes of this Court's consideration of Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File, the assertion of jurisdictional flaws in the proceedings has been waived.

PRIVILEGE & WORK PRODUCT DOCTRINE

Pursuant to S.C. Code Ann. §62-5-427, 1976, as amended, "... the conservator and the court should take into account any known estate plan of the protected person [and] any revocable trust of which he is the settlor" in order to aid the conservator "...in selecting assets of the estate for distribution under subsections (a) and (b) of §62-5-425..." This code section does not require any prior action from the Court before it can be utilized. It is only with the aid of these documents that the Conservator can effectively manage the assets of the protected person in a way that would be the closest to their wishes while still being in their best interests. Additionally, S.C. Code Ann. §62-5-408, 1976, as amended, states that the Court has certain powers which may be "exercised directly or through a conservator in respect to the estate and

affairs of protected persons..." Subsection 3(c) further states that "... the court also must inquire into and consider...the estate plan of the [protected] person..." This subsection must be read first in order to understand the layout of section 3. Subsection 3(c) states that when exercising the powers that the Court may exercise under Subsection 3(b), the Court "must inquire into and consider... the estate plan ..." Subsection (b) and subsection (a) then proceed to state specific requirements of inclusion of parties and specificity of petitions; however, the Court does not have to be entertaining such a petition to consider the estate plan of the individual. S.C. Code Ann. §62-5-408 merely imposes a heightened requirement on the Court that it "must... consider" while S.C. Code §62-5-427 states that the conservator and the Court "should take into account" the same documents. The Code permits the Court and the Conservator to view these documents pursuant to §62-5-427 and §62-5-408 and strengthens the fact that these documents should be used and considered by the Court in the management of the assets of the protected person.

Clearly, the fact that the Code includes such provisions indicates the importance the Legislature placed on the ability of the Court and the fiduciary operating on behalf of the protected person to take into account any planning documents executed by the protected person before his or her incapacity. In recognizing this necessity, allowing the claim of privilege would defeat the intention of the Legislature that the conservator and the Court have access to the documents in order to fulfill their responsibilities to the protected person.

Paula S. Saine, A. Bea Hightower as Guardian *ad Litem*, and this Court need to review the estate planning documents of Mrs. Sjoberg to determine whether a Permanent Guardian and a Permanent Conservator need to be appointed. In addition, if a decision is reached that permanent appointments are needed, the estate planning documents of Mrs. Sjoberg will be necessary to aid

Paula S. Saine in the management of the assets of Mrs. Sjoberg pursuant to S.C. Code Ann. §62-5-427, to make sure her wishes are considered and protected as much as possible.

Finally, privilege cannot be asserted if it has already been waived by action and consent. On November 3, 2010, Mr. Thomas wrote a letter to Ms. Saine in which he recognized her as being part of the privileged discussions regarding Mrs. Sjoberg's planning documents. The letter asks for Ms. Saine's assistance in reviewing a draft of Mrs. Sjoberg's Will that was included with the letter. This, in combination with the above, effectively eliminates any compelling argument with regard to privilege that has been asserted by Mr. Wood. As a point of information, no work product of Mr. Thomas or RTT has been requested by this Court.

CONCLUSION

Mr. Wood has asserted arguments regarding this Court's authority to compel RTT to produce Mrs. Sjoberg's estate planning documents and other documents necessary for Ms. Saine to make a decision as to whether there is a need for a permanent Guardianship and/or a permanent Conservatorship. However, no action was ever before this Court regarding the Court's personal jurisdiction over Mrs. Sjoberg. In addition, the issue of privilege is not an issue at all, as the Code contemplates the need for the conservator and the Court to have the estate planning documents of the protected person, and Mr. Thomas had already waived attorney-client privilege regarding Mrs. Sjoberg's estate planning documents when he sent a copy of a draft of Mrs. Sjoberg's Will to Ms. Saine, and asked for her feedback. It is within the authority of the Court to determine whether attorney-client privilege applies, and the decision of the trial judge will not be reversed absent an abuse of discretion. Ross v. Med. Univ. of South Carolina, 317 S.C. 377,453 S.E.2d 880 (1994) (citing State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980)). It is

the ruling of this Court that attorney-client privilege does not apply, and the documents stated in this Court's July 31, 2012 and August 24, 2012 Orders should be produced by RTT.

THEREFORE, IT IS HEREBY ORDERED that after carefully considering, reviewing, and re-reading motions, and the supporting memoranda of counsel, this Court respectfully **DENIES** Robert P. Wood's Motion to Reconsider. Rogers Townsend & Thomas, PC shall have until Thursday, December 6, 2012 at 5:00 p.m. to turn over all of Mrs. Sjoberg's estate planning documents, pursuant to the Order for Release of Client Documents executed on July 31, 2012 and the Amended Order for Release of Client Documents executed on August 24, 2012.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

December 4, 2012
Columbia, South Carolina

The South Carolina Court of Appeals

Robert J. Thomas and Rogers Townsend & Thomas, PC,
Appellants,

v.

Richland County Probate Court, Respondent.

Appellate Case No. 2013-000922

The Honorable Alison Renee Lee
Richland County
Trial Court Case No. 2012CP4006251

ORDER

Appellants have failed to advise the Court of the status of the transcript as required by Rule 207 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina
cc:
Robert P. Wood
Desa Allen Ballard

FILED
13 August 2013

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Case No. 2011-GC-40-00047**
COUNTY OF RICHLAND	)	**Case No. 2011-GC-40-00048**
IN RE: Mary Beth Moore Sjoberg	)	
	)	
Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore, Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg,	)	
	)	
Petitioner,	)	
v.	)	
	)	**ORDER GRANTING MOTION FOR SANCTIONS**
Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
	)	
Respondents.	)	

FILED
2015 JAN -2 PM 3:54
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon the filing of Petitioner's Motion for Sanctions Against Robert J. Thomas and Rogers Townsend & Thomas, PC on January 23, 2014 by Arthur K. Aiken of Aiken & Hightower, P.A., attorneys for the Petitioner.

BACKGROUND OF THE MATTER

Paula S. Saine, daughter of Mary Beth Moore Sjoberg, filed a Summons and Petition for Appointment of a Guardian and Appointment of a Conservator for Mary Beth Moore Sjoberg on April 22, 2011. The Petitions were filed by Rita Caughman (formerly known as "Rita Cullum"), attorney for Paula S. Saine. The cover letter attached to the Petitions requested that the matters be treated as emergency proceedings. The letter further stated that attached to it were copies of a Durable Power of Attorney and Durable Health Care Power of Attorney which might still be in effect. Ms. Caughman relayed concerns that the original Durable Power of Attorney might be in

the possession of Robert Thomas, Esq. and that it might not be recorded. Further, Ms. Caughman relayed Ms. Saine's concern that an attorney might be undertaking changes to Mrs. Sjoberg's estate planning documents. Accordingly, a hearing was scheduled for and held on May 9, 2011 and the Court issued orders on May 12, 2011 appointing Paula S. Saine as Temporary Conservator and Temporary Guardian. Bea Hightower was appointed as Guardian *ad Litem* for Ms. Sjoberg on May 16, 2011. At some point between May 16, 2011 and May 23, 2011, Robert J. Thomas, an attorney with Rogers Townsend & Thomas, PC, filed a Guardianship/Conservatorship File Request Form with the Court stating that he had been "asked to represent Mary Beth Sjoberg" and that he had accepted. On June 8, 2011, Rita Caughman filed a Proof of Delivery stating that she had obtained personal service of the Summons and Petition for the Conservatorship and Guardianship matters on Bea Hightower, Guardian *ad Litem* for Ms. Sjoberg; and Angela M. Kirby, Robert J. Thomas, and Amy Landers May, all attorneys with Rogers Townsend & Thomas, PC. On June 22, 2011, in an exchange of communications with Pope Johnson, Esquire, the Court was informed that Robert J. Thomas had asked Pope Johnson to take over the representation of Ms. Sjoberg. Pope Johnson submitted a letter on June 23, 2011, formally notifying the Court that he had been retained to represent Ms. Sjoberg. Pope Johnson filed an Answer on July 19, 2011, on behalf of Mary Beth Moore Sjoberg.

A status hearing was held on July 27, 2011. Present at the hearing were Paula S. Saine and her attorney, Rita Caughman; Pope Johnson, attorney for Ms. Sjoberg; and Bea Hightower, Guardian *ad Litem* for Ms. Sjoberg. Paula S. Saine filed an Inventory and Appraisement at the hearing. The Court was notified that Ms. Sjoberg had instructed Ms. Hightower and Mr. Johnson to cease opposing the Petitions filed by Ms. Saine. Pope Johnson indicated that he was going to have Ms. Sjoberg reevaluated to see if she had the capacity to retain counsel and direct counsel as to her wishes. On August 8, 2011, Pope Johnson submitted a letter to the Court

stating that he did not "concede or agree that Mary Beth Sjoberg is incapacitated." On September 6, 2011, Pope Johnson submitted a statement from Dr. William Brannon wherein he opined that Mary Beth Moore Sjoberg had capacity to execute a Will. The Court communicated to Mr. Johnson that it had specifically requested that the assessment be done for contractual capacity rather than testamentary capacity. On September 19, 2011, the Court was notified in writing by Bea Hightower that the parties agreed for Ms. Saine to manage Ms. Sjoberg's finances and that Ms. Hightower believed the parties had agreed that Ms. Sjoberg lacked capacity and Ms. Saine would serve as guardian. On September 20, 2011, Pope Johnson filed a Motion to Compel Discovery along with copies of his "First Set of Interrogatories Directed to The Petitioner" and "First Request for Production Directed to The Petitioner." Rita Caughman notified the Court on September 21, 2011 that the situation had changed and all issues would have to be mediated and/or litigated and she requested that the Court determine whether Ms. Sjoberg had capacity to hire an attorney in June of 2011. On October 18, 2011, Ms. Caughman filed a Motion to Strike Appearance of Counsel requesting that the Court strike the appearance of Pope Johnson in this matter.

A hearing to determine Mary Beth Moore Sjoberg's capacity and to hear Ms. Caughman's Motion was held on October 26, 2011. The Court issued an Order on December 2, 2011 finding Ms. Sjoberg to be an incapacitated person from the date of the May 3, 2011 Order to December 2, 2011; striking Pope Johnson's appearance in the matter due to Ms. Sjoberg's incapacity and inability to contract for legal services; and finding that the appointment of an attorney to review and assess the status of the legal issues for Ms. Sjoberg would be necessary. An Order was also issued on December 2, 2011 approving Ms. Hightower's fees. On December 5, 2011, Michael Polk was appointed as attorney to investigate the legal issues and provide a recommendation to the Court as to whether Ms. Sjoberg needed an attorney and whether the

documents filed by Mr. Johnson, on behalf of Ms. Sjoberg, are appropriate and necessary. Pope Johnson filed a Motion to Reconsider or Amend the December 2, 2011 Order on December 15, 2011. The Court issued an Order on December 27, 2011 approving Pope Johnson's fees in the amount of $7,754.55. On January 4, 2012, Mr. Johnson filed a Motion to Amend or Reconsider the December 27, 2011 Order regarding his fees, based on the fact that the Court did not approve his entire fee statement in the amount of $13,557.05. On January 30, 2012 the Court issued an Order regarding Mr. Johnson's December 15, 2011 Motion which required Mr. Johnson to submit a brief on the issue of standing. In addition, the Court issued an Order regarding Mr. Johnson's January 4, 2012 Motion requiring Mr. Johnson to submit a brief. Mr. Johnson filed a brief regarding the January 4, 2012 Motion on February 2, 2012.

On June 5, 2012, Michael Polk submitted a Report. In his Report, Mr. Polk concluded that Ms. Sjoberg did not need an attorney outside of the services provided by Ms. Hightower. In addition, Mr. Polk addressed concerns that had been raised about procedural defects with the temporary appointments and noted that there would be "nothing gained from starting the process over again." He stated that he spoke to Ms. Hightower about the procedural issues and she did not feel that voiding the proceedings would be in Ms. Sjoberg's best interest and Mr. Polk agreed.

On June 21, 2012, the Court issued an Order denying Pope Johnson's December 15, 2011 Motion and an Order denying Pope Johnson's January 4, 2012 Motion. Thereafter, a status conference was held on July 13, 2012 to discuss the permanent appointment of a Guardian and Conservator. Ms. Caughman, on behalf of Ms. Saine, and Ms. Hightower, on behalf of Ms. Sjoberg, requested that Ms. Sjoberg's estate planning documents be turned over to Ms. Saine, as Ms. Sjoberg's Temporary Guardian and Temporary Conservator. Rogers Townsend & Thomas, PC was contacted by the court's staff to inquire as to the process that should be used to secure

the documents requested by Ms. Caughman. Amy Landers May, indicated to the court's staff that an order should be presented to the firm to obtain the documents. In an Order dated July 31, 2012, the Court ordered Rogers Townsend & Thomas, PC to turn over Ms. Sjoberg's estate planning documents. After the documents were not produced pursuant to the July 31st Order, on August 24, 2012 the Court issued an Amended Order For Release of Client Documents stating that if the documents were not provided to Ms. Hightower or Ms. Saine, the documents were to be turned over to the Court for review and safekeeping.

On August 30, 2012, Rogers Townsend & Thomas, PC filed a "Motion to Reconsider and Claim of Privilege Pending Review of the Court's File," and on September 17, 2012 Rogers Townsend & Thomas, PC filed a Summons and Petition for Writ of Mandamus or Writ of Certiorari, in the Court of Common Pleas (2012-CP-40-06251). The Petition requested an Order from the Circuit Court to command the Probate Court to turn over the Mary Beth Sjoberg Guardianship and Conservatorship files. On the same day, Rogers Townsend & Thomas, PC filed a Memorandum in Support of Motion to Reconsider with this Court. On September 25, 2012 the files were provided to Rogers Townsend & Thomas, PC and Robert P. Wood executed a Receipt of Documents on behalf of Rogers Townsend & Thomas, PC. The Court issued an Order Releasing Documents and Protective Order on October 18, 2012, *nunc pro tunc* to September 25, 2012. Rogers Townsend & Thomas, PC filed a Second Memorandum in Support of Motion to Reconsider on October 25, 2012. Ms. Hightower filed a Memorandum in Opposition to Motion to Reconsider on November 9, 2012. On December 4, 2012, the Court issued an Order Denying Motion to Reconsider. Rogers Townsend & Thomas, PC filed a Notice of Intent to Appeal on December 6, 2012. On December 11, 2012, Rogers Townsend & Thomas, PC filed a Return to Motion to Dismiss in the Court of Common Pleas notifying the

Circuit Court that the 2012-CP-40-06251 case was moot due to the Probate Court releasing the requested documents from the court's files.

Even though Rogers Townsend & Thomas, PC acknowledged that the matter involving the Summons and Petition for Writ of Mandamus or Writ of Certiorari that it filed in the Court of Common Pleas (2012-CP-40-06251) was moot, it continued to pursue the issue of the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Moore Sjoberg's estate planning documents. Rogers Townsend & Thomas, PC filed Grounds of Appeal on January 17, 2013 with this Court and the Court of Common Pleas (2012-CP-40-08088) stating their reasons for appealing the Order for Release of Client Documents, dated July 31, 2012; Amended Order for Release of Client Documents, dated August 24, 2012; and Order Denying Motion to Reconsider, dated December 4, 2012. The Appeal (2012-CP-40-08088) was dismissed by the Circuit Court on January 10, 2014, as being moot due to Ms. Sjoberg's death on January 6, 2014.

CURRENT MATTER

Petitioner's Motion for Sanctions Against Robert J. Thomas and Rogers Townsend & Thomas, PC was filed on January 23, 2014. The Motion alleges that sanctions are warranted in accordance with the South Carolina Frivolous Civil Proceedings Sanction Act (SCFCPSA); S.C. Code Ann. § 15-36-10; and Rule 11 of the South Carolina Rules of Civil Procedure. On February 18, 2014, Warren C. Powell, Jr. of Bruner, Powell, Wall & Mullins, LLC, filed a Notice of Appearance as counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC. Mr. Powell argues that sanctions should not be imposed because of lack of standing of Petitioner to bring the action, lack of timely filing of the action pursuant to the requirements of the South Carolina Frivolous Civil Proceedings Sanction Act, inapplicability of Rule 11 of the South Carolina Rules of Civil Procedure, attorney client privilege, and lack of personal jurisdiction.

A hearing was scheduled for May 20, 2014 to hear Petitioner's Motion for Sanctions. On May 16, 2014, Mr. Powell filed an Affidavit of Robert J. Thomas; Affidavit of Robert P. Wood; and Affidavit of D. Cravens Ravenel. Mr. Powell filed a Memorandum in Opposition to Motion for Sanctions, along with Exhibits "A" through "V", on May 19, 2014.

Present at the hearing on May 20, 2014 were: William D. Britt, Jr. and Warren C. Powell, Jr. of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC; Robert P. Wood, attorney with Rogers Townsend & Thomas, PC; D. Cravens Ravenel, witness; Paula Saine, Petitioner, and her attorneys Rita Caughman and Arthur K. Aiken; and Bea Hightower, as attorney and Guardian *ad Litem* for Mary Beth Sjoberg. Prior to the start of the hearing, Mr. Aiken filed a Memorandum in Support of Motion for Sanctions along with Affidavits from Paula Saine, Rita Caughman, and Bea Hightower. Mr. Britt and Mr. Powell filed a Reply to Mr. Aiken's Memorandum in Support of Motion for Sanctions.

Based on the documents filed and arguments from counsel, the Court makes the following findings of fact and conclusions of law:

S. C. FRIVOLOUS CIVIL PROCEEDINGS SANCTION ACT
and RULE 11, S.C. RULES OF CIVIL PROCEDURE

The Motion for Sanctions is brought under the South Carolina Frivolous Civil Proceedings Sanction Act (SCFCPSA), as codified in S.C. Code Ann. § 15-36-10 (Supp. 2012), and Rule 11 of the South Carolina Rules of Civil Procedure.

The S. C. Frivolous Civil Proceedings Sanction Act

The SCFCPSA applies a "reasonable attorney" standard to actions taken in a civil or administrative action. Southeastern Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (Ct. App. 2011). Pursuant to S.C. Code Ann. § 15-36-10(A)(4), an attorney may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defenses upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

In determining whether an attorney has violated the provisions of the SCFCPSA, the Court shall take into account:

(1) the number of parties;
(2) the complexity of the claims and defenses;
(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
(5) previous violations of the provisions of this section;
(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
(7) other factors the court considers just, equitable, or appropriate under the circumstances.

S.C. Code Ann. § 15-36-10(E).

The party making the motion for sanctions under the SCFCPSA has the burden of proof. S.C. Code Ann. § 15-36-10(C)(2). To meet this burden of proof, the moving party must show that the preponderance of evidence supports the imposition of sanctions. Id.

Rule 11 of the SCRCP

The Motion for Sanctions is also brought under Rule 11, SCRCP. Specifically, Rule 11(a) provides that:

> Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay...
>
> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader of movant. If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fee.

Standing For Petitioner to Bring This Action

Before the application of the law can be considered, the Court must consider the issue of whether the Petitioner had the standing to bring the action. Robert Thomas and Rogers Townsend & Thomas, PC argue that the Petitioner does not have standing to file a Motion for Sanctions as "the Attorney-in-Fact for Mary Beth Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg" as the action is captioned. They cite S.C. Code Ann. § 62-5-501(B), which states:

> ... [u]nless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.

In this case only temporary appointments were made. However, until there is a permanent appointment of a conservator or guardian, there has not been a final determination that a conservator or guardian is needed for the long term. Therefore, Paula Saine's appointment as Ms. Sjoberg's Temporary Conservator did not automatically void and terminate her role as Ms. Sjoberg's attorney-in-fact under any existing power of attorney for business affairs as Ms.

Sjoberg's attorney-in-fact. Rather, the authority given under the power of attorney for business affairs was only suspended by the temporary appointment, and it would not be terminated until a permanent was made. This is because until a permanent appointment is made, it is not known in any given case whether there will actually be a permanent conservator and/or permanent guardian. Ms. Saine's authority to act as Temporary Conservator and Temporary Guardian for Ms. Sjoberg did terminate upon Ms. Sjoberg's death. See S.C. Code Ann. §§ 62-5-306 and 62-5-430, 1976, as amended.

Despite not having standing after Ms. Sjoberg's death as attorney-in-fact, Temporary Guardian, or Temporary Conservator, Paula Saine was nominated in Ms. Sjoberg's Will to be appointed as the Personal Representative of Mary Beth Sjoberg's Estate. S.C. Code Ann. § 62-3-703(c) states:

> Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at [her] death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as [her] decedent had immediately prior to death."

Paula Saine was appointed as Personal Representative of Ms. Sjoberg's Estate on January 9, 2014 and, as such, Ms. Saine had standing to bring this action.

Applicability of SCFCPSA

Robert Thomas and Rogers Townsend & Thomas, PC argue that the SCFCPSA should not apply because the Petitioner failed to timely file the Motion for Sanctions. In a recent South Carolina Supreme Court opinion, the Court found that:

> Motions made pursuant to the FCPSA are post-trial motions. *See* S.C. Code Ann. 15–36–10(C)(1) (Supp.2012) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous."). As such, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA. *See In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct.App.2004) (referring to motions made under the FCPSA as "post-trial motions for

sanctions" and finding that the general ten-day limitation for post-trial motions applies to motion made pursuant to the FCPSA); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 432–33, 570 S.E.2d 187, 189–90 (Ct.App.2002) ("Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct.App.2006) ("[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment." (alteration in original)). Holmes v. East Cooper Community Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483, 495 (2014).

This Court retained jurisdiction over the matter following the Order Denying Motion to Reconsider, filed on December 4, 2012. In Guardianship and Conservatorship matters, the Court retains jurisdiction until the ward regains capacity or dies and the matter is closed. In this matter, the Court had only appointed a Temporary Guardian and Temporary Conservator; the filing of the appeal to the Circuit Court stayed the ability of this Court to make permanent appointments. Therefore, a final order on the Petitions for Appointment had not been made and the appeal was interlocutory. The ten-day time period began to run when the Guardian *ad Litem* received notice of the Circuit Court's Order dismissing the appeal. The Order was dated January 10, 2014 but the Guardian *ad Litem* did not receive notice until January 11, 2014.

Therefore, the Motion for Sanctions was filed timely filed and the Court can consider the imposition of sanctions based upon the S. C. Frivolous Civil Proceedings Sanction Act.

Applicability of Rule 11, SCRCP

Rule 11 of the South Carolina Rules of Civil Procedure is applicable in this matter. The applicable case law is as follows:

"Under [Rule 11(a)], a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). "The sanction may include an order to pay

the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." Id. Rule 11 is evaluated by a subjective standard. Ex parte Bon Secours-St. Francis Hosp., Inc., 393 S.C. 590, 598-99, 713 S.E.2d 624, 628-29 (2011). The decision whether to impose sanctions sounds in equity. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).

Therefore, the court can consider whether the actions of Robert Thomas and Rogers Townsend & Thomas, PC were those of a reasonable attorney under the circumstances.

Attorney Client Privilege

After the Court ordered Robert Thomas and Rogers Townsend & Thomas, PC to release Ms. Sjoberg's estate planning documents, they filed a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File on August 30, 2012.

Pursuant to Rule 1.6 of the South Carolina Rules of Professional Conduct (SCRPC), a lawyer is generally prohibited from revealing information related to the representation of a client unless the client gives informed consent or if the disclosure is permitted by subsection (b). Subsection (b)(7) states that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law or a court order." However, Comment 14 to Rule 1.6 provides:

> A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent

required by Rule 1.4. Unless review is sought, however, paragraph (b)(7) permits the lawyer to comply with the court's order.

Rule 1.0(g) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternative to the proposed course of conduct."

Paula Saine met with Robert Thomas and Mary Beth Sjoberg to discuss Ms. Sjoberg's Will in October of 2010 (Saine Affid. Para. 5). On November 3, 2010 Ms. Saine received a letter from Robert Thomas enclosing a copy of the draft of Ms. Sjoberg's Will and a copy of a Durable Power of Attorney naming Ms. Saine as the attorney in fact. (Saine Affid. Para. 6). Again, Ms. Saine met with Mr. Thomas and Ms. Sjoberg to discuss Ms. Sjoberg's Will and Ms. Saine received a second draft of Ms. Sjoberg's Will. (Saine Affid. Para. 7). On January 11, 2011, Robert Thomas provided Ms. Saine a copy of Ms. Sjoberg's executed Will, dated November 12, 2010. The original of the November 12, 2010 Will was filed for probate following Ms. Sjoberg's death. (Saine Affid. Para. 8).

Robert Thomas claimed that he could not turn over Ms. Sjoberg's estate planning documents because of attorney client privilege. However, he clearly had informed consent when he provided drafts of Ms. Sjoberg's Will, the durable power of attorney, and Ms. Sjoberg's executed Will. Further, Ms. Saine met with Mr. Thomas and Ms. Sjoberg to discuss Ms. Sjoberg's draft Wills. Ms. Sjoberg never executed a subsequent Will, and there is no evidence that she had ever withdrawn the informed consent she had previously given. Accordingly, at the very least, Robert Thomas and RTT should have notified Ms. Saine that she was already in possession of a copy of Ms. Sjoberg's most recent Will or the firm should have turned over the documents as requested by Ms. Saine and ordered by this Court.

In addition, Robert Thomas and RTT should have provided the estate planning documents as allowed under Rule 1.6(b)(7). The Court issued an Order and the law permits the Court to "inquire into and consider any known lifetime gifts or the estate plan of the person." S.C. Code Ann. § 62-5-408(3)(b). Further the law instructs the Conservator and the Court to "take into account any known estate plan of the protected person..." S.C. Code Ann. § 62-5-427.

Comment 15 to Rule 1.6 provides:

> Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable. (emphasis added).

In the Court's Amended Order for Release of Client Documents, dated August 24, 2012, the Court clearly provides that any documents not provided to the Guardian *ad Litem* or Ms. Saine, shall be provided to the Probate Court for examination and safekeeping. If Robert Thomas and RTT were concerned about Ms. Saine viewing the documents, they should have turned the documents over to the Court and requested that the Court make a determination as to whether the documents should be disclosed to Ms. Saine as Temporary Guardian and Temporary Conservator.

Personal Jurisdiction

In addition to arguing attorney client privilege, Robert Thomas and RTT argued that the Court did not have personal jurisdiction over Ms. Sjoberg, as she was never personally served. The argument was made with regard to both the conservatorship and guardianship actions.

Although S.C. Code Ann. § 62-5-405, 1976, as amended, requires the alleged incapacitated person to be personally served with the summons and petition with regard to conservatorships and protective proceedings before a hearing is held, actions for the appointment of a temporary guardian are different. S.C. Code Ann. §§ 62-5-309 and 62-5-310, 1976, as amended, do not require service on the alleged incapacitated person prior to appointing a temporary guardian.

Many of the facts pertaining to the issue of personal jurisdiction were cited in the background of the case, but they bear repeating here because they get to the crux of this issue. After the initial hearing on May 9, 2011, an Order making the temporary appointments was filed on May 12, 2011. On June 8, 2011, Rita Caughman filed a Proof of Delivery stating that she had obtained personal service of the Summons and Petition for the Guardianship and Conservatorship matters on Bea Hightower, Guardian *ad Litem* for Ms. Sjoberg; and Angela M. Kirby, Robert J. Thomas, and Amy Landers May, all attorneys with Rogers Townsend & Thomas, PC. This fact is undisputed. On June 22, 2011, in an exchange of communications with Pope Johnson, Esquire, the Court was informed that Robert J. Thomas had asked Mr. Johnson to take over the representation of Ms. Sjoberg. Pope Johnson submitted a letter on June 23, 2011, formally notifying the Court that he had been retained to represent Ms. Sjoberg, and he filed an Answer on her behalf on July 19, 2011.

Despite the fact that he had been served with a copy of the pleadings regarding the individual who Robert Thomas indicated to the Court was his client, Ms. Sjoberg, it was Mr. Johnson who contacted the Court about the change in representation, and not Mr. Thomas. In addition, at no time did Mr. Thomas or any other attorney at Rogers Townsend and Thomas, PC affirmatively state to Rita Caughman that neither he nor the firm could accept service of the pleadings for Ms. Sjoberg. Throughout these proceedings, much has been made of the fact that Mr. Thomas and Ms. Sjoberg had a long-standing attorney-client relationship, which was

certainly known of by Paula Saine, Ms. Caughman's client. Accordingly, once Ms. Caughman served the pleadings on Mr. Thomas, if he had no authorization to receive the pleadings for his client he should have taken affirmative steps to so inform Ms. Caughman.

Not only did Robert Thomas and Rogers Townsend and Thomas, PC not take any affirmative steps to inform Ms. Caughman that they would not accept service on behalf of Ms. Sjoberg, Mr. Thomas then asked Mr. Johnson to take over the representation without anyone informing him that either Mr. Thomas or the firm had an issue with regard to service of the pleadings. In addition, apparently no one brought any other jurisdictional issues to Mr. Johnson's attention. Pope Johnson then filed an Answer on behalf of Ms. Sjoberg on July 19, 2011 that did not address any jurisdictional issues.

Mr. Powell argues on behalf of Robert Thomas and RTT that the Court voided Pope Johnson's representation which in turn voided his Answer. Mr. Powell referenced this Court's Order Confirming Ongoing Incapacity and Order Regarding Motion to Strike Appearance of Counsel, dated December 2, 2011, in which the Court found that "any contractual engagement between Mrs. Sjoberg and Mr. Johnson is void." (See Finding of Fact #17). The Court went on to find that Mr. Johnson acted in good faith and "has attempted to pursue what he believes to be the best interests of Mrs. Sjoberg." (See Finding of Fact #18). As a result of the finding that Mr. Johnson acted in what he believed to be in Ms. Sjoberg's best interests, the Court awarded Mr. Johnson attorney's fees for his services.

Guardianship and Conservatorship matters are formal matters that are not only governed by the S. C. Probate Code but also by the South Carolina Rules of Civil Procedure. Therefore, if an attorney believes that the court lacks personal jurisdiction over his or her client, as provided in SCRCP Rule 12(b)(2), the proper procedure is to address the issue by filing a motion as

described in Rule 12 or asserting it in a responsive pleading. If the issue is not raised in that manner, then raising the issue is waived, pursuant to Rule 12(h)(1), SCRCP.

In an effort to protect Ms. Sjoberg's interests after Mr. Johnson's appearance was stricken from the record, the Court ordered that all of Mr. Johnson's Motions be held in abeyance until an attorney could be appointed to investigate Ms. Sjoberg's interests. Shortly thereafter, Michael Polk was appointed as counsel for Ms. Sjoberg to investigate Ms. Sjoberg's interests and report back to the Court. In his June 5, 2012 Report, Mr. Polk specifically addressed the procedural defects and found that there would be "nothing gained from starting the process over again." Further, Mr. Polk discussed the procedural issues with Ms. Hightower and they felt that voiding the proceedings would not be in Ms. Sjoberg's best interests.

The legal arguments that are now being made by Mr. Powell with regard to jurisdiction could have easily been raised by Mr. Thomas in a timely manner. Mr. Powell's argument cannot survive the fact that even though Pope Johnson was counsel of record for Ms. Sjoberg, the fee statements he submitted in support of his request for attorney's fees are the *prima facie* evidence that Robert Thomas remained actively involved in the case from the time the case was first referred to Mr. Johnson by Mr. Thomas to almost its conclusion. The following language is lifted verbatim from this Court's Order Regarding Pope D. Johnson III's Motion to Alter or Amend Order Approving Attorney's Fees, dated and filed on June 21, 2012:

> **III. B. Mr. Johnson's Billing Statement and Contact with Robert J. Thomas**
>
> At the hearing, Mr. Johnson stated that he was contacted and retained by Robert J. Thomas (hereinafter "Mr. Thomas"), Ms. Sjoberg's longtime attorney and friend. Mr. Johnson testified, and his billing statement indicates, that his fee/retainer agreement was sent to Mr. Thomas on June 22, 2011, for Ms. Sjoberg to sign. The fee agreement was signed on June 23, 2011, by Ms. Sjoberg and testimony at the hearing was that Mr. Thomas had his "client" sign the Agreement to Provide Legal Services that created, or attempted to create, a contract for legal services between Ms. Sjoberg and Mr. Johnson based on Mr. Thomas' referral. Not until approximately one (1) month after Ms. Sjoberg signed the fee agreement did Mr. Johnson meet with Ms. Sjoberg for the first time; however, between June

22, 2011, and July 19, 2011, Mr. Johnson's billing indicates he had six (6) contacts with Mr. Thomas and none with Ms. Sjoberg. By August 4, 2011, Mr. Johnson had received and reviewed all of the medical information that indicated incapacity, and during the period he began representation on June 22-23, 2011, and August 4, 2011, he had eleven (11) different contacts with Mr. Thomas and only one (1) contact with Ms. Sjoberg. A conference between Ms. Sjoberg, Mr. Johnson, and Mr. Thomas was held on August 12, 2011, and Mr. Johnson's next contact with Ms. Sjoberg would not be until September 26, 2011, by letter. The next contact after that was a phone call to Ms. Sjoberg on October 5, 2011. Between the September 9, 2011 letter and the telephone conference on October 5, 2011, Mr. Johnson had three (3) contacts with Mr. Thomas, and between the telephone conference and the in-person meeting on October 11, 2011, Mr. Johnson had two (2) more contacts with Mr. Thomas. Altogether, Mr. Johnson's billing statement reflects that from June 22, 2011, the time he was initially contacted about representing Ms. Sjoberg, through October 27, 2011, Mr. Johnson had thirty (30) contacts with Mr. Thomas and only seven (7) contacts with Ms. Sjoberg, his client.

The Court notes that Mr. Johnson did not have Mr. Thomas present at the hearing to testify regarding his contact with Mr. Thomas, the issue surrounding Mr. Thomas' referral of Ms. Sjoberg to Mr. Johnson and the circumstances of Ms. Sjoberg signing Mr. Johnson's fee agreement, or any other issues in this case involving Mr. Thomas' contact with Ms. Sjoberg.

In Paragraph IV. of the June 21st Order the Court found that Mr. Johnson spent more than four times more time conferring and meeting with Mr. Thomas about the case than he did with Ms. Sjoberg (See Paragraph IV. Conclusion, page 12), which would certainly be characterized as regular and ongoing communication between Mr. Johnson and Mr. Thomas. At any time during this regular and ongoing communication, starting at the time the case was first referred, Mr. Thomas could have certainly raised the issue of service of the pleadings on him and the firm on behalf of Ms. Sjoberg, and he could have suggested that Mr. Johnson file a motion pursuant to the S.C. Rules of Civil Procedure asking that the conservatorship action be dismissed because of a lack of personal jurisdiction over Ms. Sjoberg.

As the court's file reflects, Mr. Johnson's Answer did not include nor did he amend his Answer to plead a lack of personal jurisdiction, which would have addressed the issue. In addition, both Mr. Polk and Ms. Hightower effectively waived the issue of personal service in

the conservatorship action on behalf of Ms. Sjoberg, by not recommending that the actions regarding the appointment of a guardian and conservator be restarted from the beginning. Accordingly, this Court finds that as no action was ever taken to affirmatively plead a lack of personal jurisdiction or to file a motion pursuant to Rule 12 of the SCRCP, once the time passed for Mr. Johnson to amend his answer and/or file any counterclaims, the Court had personal jurisdiction over Ms. Sjoberg regarding both the guardianship and conservatorship matters.

CONCLUSION

The evidence shows that the actions of Robert Thomas and/or the firm of Rogers Townsend and Thomas, PC were not reasonable, given the facts and circumstances of this case. Mr. Thomas, and Rogers Townsend and Thomas, PC, by way of representation of Mr. Thomas and on its own behalf, elected to pursue two separate courses of action long past the point reasonably necessary to achieve the results it was seeking.

First, in response to the request of Rogers Townsend and Thomas, PC that the Court issue an Order to affect the release of Ms. Sjoberg's estate planning documents, the Court did so. An Order was filed on July 31, 2012 that ordered Rogers Townsend & Thomas, PC to turn over Ms. Sjoberg's estate planning documents, and when the documents were not released an Amended Order for Release of Client Documents was filed on August 24, 2014, which offered additional options to the firm as to whom the documents could be released.

Despite this, on August 30, 2012 Rogers Townsend & Thomas, PC filed a "Motion to Reconsider and Claim of Privilege Pending Review of the Court's File," and on September 17, 2012 Rogers Townsend & Thomas, PC filed a Summons and Petition for Writ of Mandamus or Writ of Certiorari, in the Court of Common Pleas. The Petition requested an Order from the Circuit Court to command the Probate Court to turn over the Mary Beth Sjoberg Guardianship and Conservatorship files. On the same day, Rogers Townsend & Thomas, PC filed a

Memorandum in Support of Motion to Reconsider with this Court. On September 25, 2012 the files were provided to Rogers Townsend & Thomas, PC and Robert P. Wood executed a Receipt of Documents on behalf of Rogers Townsend & Thomas, PC. The Court issued an Order Releasing Documents and Protective Order on October 18, 2012, *nunc pro tunc* to September 25, 2012 regarding the release of the Guardianship and Conservatorship files. Despite that, Rogers Townsend & Thomas, PC filed a Second Memorandum in Support of Motion to Reconsider on October 25, 2012. On December 4, 2012, the Court issued an Order Denying Motion to Reconsider. Rogers Townsend & Thomas, PC then filed a Notice of Intent to Appeal on December 6, 2012. Finally, on December 11, 2012 Rogers Townsend & Thomas, PC filed a Return to Motion to Dismiss in the Court of Common Pleas notifying the Circuit Court that the case was moot due to the Probate Court releasing the requested documents from the court's files. It was completely unreasonable and frivolous for Robert Thomas and Rogers Townsend and Thomas to continue to pursue the matter of demanding that they receive the Guardianship and Conservatorship files, even after they already had the files in hand.

Second, once Rogers Townsend and Thomas, PC had the Guardianship and Conservatorship files in hand it continued to pursue the issue of contesting the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Moore Sjoberg's client records. Rogers Townsend & Thomas, PC filed Grounds of Appeal on January 17, 2013 with this Court and the Court of Common Pleas stating their reasons for appealing the Order for Release of Client Documents, dated July 31, 2012; Amended Order for Release of Client Documents, dated August 24, 2012; and Order Denying Motion to Reconsider, dated December 4, 2012. The Appeal to the Circuit Court was dismissed by the Honorable DeAndrea G. Benjamin on January 10, 2014, as being moot, due to Ms. Sjoberg's death on January 6, 2014.

The continued efforts by Mr. Thomas and Rogers Townsend and Thomas, PC to contest the release of Ms. Sjoberg's estate planning documents was particularly unreasonable and frivolous. The language of the S.C. Probate Code, Article 5, clearly requires that a conservator take into account the estate planning of the incapacitated person. After refusing to comply with this Court's Orders for eighteen months, it was only upon Ms. Sjoberg's death in January of 2014 that it became known that the Will that Mr. Thomas and Rogers Townsend and Thomas, PC refused to release was, in fact, the very same document that Ms. Sjoberg had previously given informed consent in 2010 for Mr. Thomas to give a copy of to Ms. Saine. Rather than continuing to fight the release of documents, it would have been so simple for Mr. Thomas to inform Paula Saine that the documents were the same, but that he would not give her the original of the Will; however, he chose not to do that.

Mr. Thomas in his consultations with Mr. Johnson, for whatever reason, chose not to suggest affirmatively pursuing challenging personal jurisdiction in a responsive pleading, or using the tools available to all attorneys provided by Rule 12 of the SCRCP. Michael J. Polk, as an independent attorney appointed by the Court to review the procedural issues, and Bea Hightower, Esquire as Guardian *ad Litem* for Ms. Sjoberg, concluded that it would not be in Ms. Sjoberg's best interests to begin the proceedings again.

The effect of all of this was to tie up an inordinate amount of the Court's time, along with the time of the court's staff, along with the time of Ms. Caughman, Ms. Saine, and Ms. Hightower. It also created the need to focus a great deal of unnecessary attention, energy, and monetary resources on things that had nothing to do with Ms. Sjoberg's actual care or her well being in the last few years of her life. The actions of Robert Thomas and Rogers Townsend and Thomas, PC were not those of a reasonable attorney and a reasonable law firm, and were frivolous based on the circumstances described herein.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that after carefully considering, reviewing, and rereading motions and supporting memoranda of counsel, the Petitioner's Motion for Sanctions Against Robert J. Thomas and Rogers Townsend & Thomas, PC is **GRANTED.**

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

January 2, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Case No.: 2011-GC-40-00047**
COUNTY OF RICHLAND)	**Case No.: 2011-GC-40-00048**
)	
IN RE: Mary Beth Moore Sjoberg)	
)	
Paula S. Saine, as the Attorney-in-Fact for)	
Mary Beth Moore Sjoberg, Principal and)	
as the Daughter of Mary Beth Moore)	
Sjoberg,)	
)	
Petitioner,)	
)	
v.)	**ORDER DENYING**
)	**MOTION TO RECONSIDER**
Mary Beth Moore Sjoberg, an alleged)	
incapacitated person, A. Bea Hightower,)	
as Guardian ad Litem for Mary Beth)	
Moore Sjoberg and Paula S. Saine,)	
)	
Respondents.)	
)	

FILED
2015 JUL 13 PM 12:25
ANNE W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THIS MATTER COMES BEFORE THE COURT upon the filing of a Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions on January 15, 2015, by Robert J. Thomas and the law firm of Rogers Townsend & Thomas, PC (hereinafter also referred to as "RTT"). Pursuant to Rule 59(f), SCRCP, the Court requested the parties to submit briefs in lieu of oral arguments. Mr. Thomas and Rogers Townsend & Thomas filed a Memorandum in Support of their Motion to Reconsider on February 27, 2015. Additionally, Petitioner filed a Memorandum in Opposition to the Motion to Reconsider on March 13, 2015. Mr. Thomas and Rogers Townsend & Thomas timely filed their Reply to Petitioner's Memorandum in Opposition on March 17, 2015.

In their Motion, Mr. Thomas and Rogers Townsend & Thomas raise several issues including the issues regarding personal jurisdiction over Mary Beth Moore Sjoberg ("Ms. Sjoberg"), assertion of attorney-client privilege, applicability and timeliness of Motion for

Sanctions under the South Carolina Frivolous Proceedings Sanction Act and under Rule 11, SCRCP, among other things. Given the breadth of the discussion in the Order Granting Motion for Sanctions, along with all Memorandums that have been filed in this matter, the Court will focus on those issues it considers key points for consideration in how the Court reached its ruling. Additionally, the Court makes reference to its January 2, 2015 Order Granting Motion for Sanctions and incorporates its previous findings, in addition to the more specific discussion of some of those findings as addressed herein. For the purposes of continuity and the purposes of this Order, the background of this matter is being restated.

BACKGROUND

Paula S. Saine, daughter of Mary Beth Moore Sjoberg, filed a Summons and Petition for Appointment of a Guardian and Appointment of a Conservator for Mary Beth Moore Sjoberg on April 22, 2011. The Petitions were filed by Rita Caughman (formerly known as "Rita Cullum"), attorney for Paula S. Saine. The cover letter attached to the Petitions requested that the matters be treated as emergency proceedings. The letter further stated that attached to it were copies of a Durable Power of Attorney and Durable Health Care Power of Attorney which might still be in effect. Ms. Caughman relayed concerns that the original Durable Power of Attorney might be in the possession of Robert J. Thomas, Esquire and that it might not be recorded. Further, Ms. Caughman relayed Ms. Saine's concern that an attorney might be undertaking changes to Mrs. Sjoberg's estate planning documents. Accordingly, a hearing was scheduled for and held on May 9, 2011 and the Court issued Orders on May 12, 2011 appointing Paula S. Saine as Temporary Conservator and Temporary Guardian. Bea Hightower was appointed as Guardian *ad Litem* for Ms. Sjoberg on May 16, 2011. At some point between May 16, 2011 and May 23, 2011, Robert J. Thomas, an attorney with Rogers Townsend & Thomas, PC, filed a

Guardianship/Conservatorship File Request Form with the Court stating that he had been "asked to represent Mary Beth Sjoberg" and that he had accepted. On June 8, 2011, Rita Caughman filed a Proof of Delivery stating that she had obtained personal service of the Summons and Petition for the Conservatorship and Guardianship matters on Bea Hightower, Guardian *ad Litem* for Ms. Sjoberg; and on Angela M. Kirby, Robert J. Thomas, and Amy Landers May, all attorneys with Rogers Townsend & Thomas, PC. Robert J. Thomas participated during the initial attempts to schedule the status hearing, and was asked his availability for the status hearing. On June 22, 2011, in an exchange of communications with Pope Johnson, Esquire, the Court was informed that Robert J. Thomas had asked Pope Johnson to take over the representation of Ms. Sjoberg. Pope Johnson submitted a letter on June 23, 2011, formally notifying the Court that he had been retained to represent Ms. Sjoberg. Pope Johnson filed an Answer on July 19, 2011, on behalf of Mary Beth Moore Sjoberg.

A status hearing was held on July 27, 2011. Present at the hearing were Paula S. Saine and her attorney, Rita Caughman; Pope Johnson, attorney for Ms. Sjoberg; and Bea Hightower, Guardian *ad Litem* for Ms. Sjoberg. Paula S. Saine filed an Inventory and Appraisement at the hearing. The Court was notified that Ms. Sjoberg had instructed Ms. Hightower and Mr. Johnson to cease opposing the Petitions filed by Ms. Saine. Pope Johnson indicated that he was going to have Ms. Sjoberg reevaluated to see if she had the capacity to retain counsel and direct counsel as to her wishes. On August 8, 2011, Pope Johnson submitted a letter to the Court stating that he did not "concede or agree that Mary Beth Sjoberg is incapacitated." On September 6, 2011, Pope Johnson submitted a statement from Dr. William Brannon wherein he opined that Mary Beth Moore Sjoberg had capacity to execute a Will. The Court communicated to Mr. Johnson that it had specifically requested that the assessment be done for contractual

capacity rather than testamentary capacity. On September 19, 2011, the Court was notified in writing by Bea Hightower that the parties agreed for Ms. Saine to manage Ms. Sjoberg's finances and that Ms. Hightower believed the parties had agreed that Ms. Sjoberg lacked capacity and Ms. Saine would serve as guardian. On September 20, 2011, Pope Johnson filed a Motion to Compel Discovery along with copies of his "First Set of Interrogatories Directed to The Petitioner" and "First Request for Production Directed to The Petitioner." Rita Caughman notified the Court on September 21, 2011 that the situation had changed and all issues would have to be mediated and/or litigated and she requested that the Court determine whether Ms. Sjoberg had capacity to hire an attorney in June 2011. On October 18, 2011, Ms. Caughman filed a Motion to Strike Appearance of Counsel requesting that the Court strike the appearance of Pope Johnson in this matter.

A hearing to determine Mary Beth Moore Sjoberg's capacity and to hear Ms. Caughman's Motion was held on October 26, 2011. The Court issued an Order on December 2, 2011 finding Ms. Sjoberg to be an incapacitated person from the date of the May 3, 2011 Order to December 2, 2011; striking Pope Johnson's appearance in the matter due to Ms. Sjoberg's incapacity and inability to contract for legal services; and finding that the appointment of an attorney to review and assess the status of the legal issues for Ms. Sjoberg would be necessary. An Order was also issued on December 2, 2011 approving Ms. Hightower's fees. On December 5, 2011, Michael J. Polk was appointed as attorney to investigate the legal issues and provide a recommendation to the Court as to whether Ms. Sjoberg needed an attorney and whether the documents filed by Mr. Johnson, on behalf of Ms. Sjoberg, are appropriate and necessary. Pope Johnson filed a Motion to Reconsider or Amend the December 2, 2011 Order, on December 15, 2011. The Court issued an Order on December 27, 2011 approving Pope Johnson's fees in the

amount of $7,754.55. On January 4, 2012, Mr. Johnson filed a Motion to Amend or Reconsider the December 27, 2011 Order regarding his fees, based on the fact that the Court did not approve his entire fee statement in the amount of $13,557.05. On January 30, 2012 the Court issued an Order regarding Mr. Johnson's December 15, 2011 Motion which required Mr. Johnson to submit a brief on the issue of standing. In addition, the Court issued an Order regarding Mr. Johnson's January 4, 2012 Motion requiring Mr. Johnson to submit a brief. Mr. Johnson filed a brief regarding the January 4, 2012 Motion on February 2, 2012.

On June 5, 2012, Michael J. Polk submitted a Report. In his Report, Mr. Polk concluded that Ms. Sjoberg did not need an attorney outside of the services provided by Ms. Hightower. In addition, Mr. Polk addressed concerns that had been raised about procedural defects with the temporary appointments and noted that there would be "nothing gained from starting the process over again." He stated that he spoke to Ms. Hightower about the procedural issues and she did not feel that voiding the proceedings would be in Ms. Sjoberg's best interest and Mr. Polk agreed.

On June 21, 2012, the Court issued an Order denying Pope Johnson's December 15, 2011 Motion and an Order denying Pope Johnson's January 4, 2012 Motion. Thereafter, a status conference was held on July 13, 2012 to discuss the permanent appointment of a Guardian and Conservator. Ms. Caughman, on behalf of Ms. Saine, and Ms. Hightower, on behalf of Ms. Sjoberg, requested that Ms. Sjoberg's estate planning documents be turned over to Ms. Saine, as Ms. Sjoberg's Temporary Guardian and Temporary Conservator. Rogers Townsend & Thomas, PC was contacted by the court's staff to inquire as to the process that should be used to secure the documents requested by Ms. Caughman. Attorney Amy Landers May, indicated to the court's staff that an Order should be presented to the firm to obtain the documents. In an Order

dated July 31, 2012, the Court ordered Rogers Townsend & Thomas, PC to turn over Ms. Sjoberg's estate planning documents. After the documents were not produced pursuant to the July 31st Order, on August 24, 2012 the Court issued an Amended Order for Release of Client Documents stating that if the documents were not provided to Ms. Hightower or Ms. Saine, the documents were to be turned over to the Court for review and safekeeping.

On August 30, 2012, Rogers Townsend & Thomas, PC filed a "Motion to Reconsider and Claim of Privilege Pending Review of the Court's File," and on September 17, 2012 Rogers Townsend & Thomas, PC filed a Summons and Petition for Writ of Mandamus or Writ of Certiorari, in the Court of Common Pleas (2012-CP-40-06251). The Petition requested an Order from the Circuit Court to command the Probate Court to turn over the Mary Beth Sjoberg Guardianship and Conservatorship files. On the same day, Rogers Townsend & Thomas, PC filed a Memorandum in Support of Motion to Reconsider with this Court. On September 25, 2012 the files were provided to Rogers Townsend & Thomas, PC and Robert P. Wood executed a Receipt of Documents on behalf of Rogers Townsend & Thomas, PC. The Court issued an Order Releasing Documents and Protective Order on October 18, 2012, *nunc pro tunc* to September 25, 2012. Rogers Townsend & Thomas, PC filed a Second Memorandum in Support of Motion to Reconsider on October 25, 2012. Ms. Hightower filed a Memorandum in Opposition to Motion to Reconsider on November 9, 2012. On December 4, 2012, the Court issued an Order Denying Motion to Reconsider. Rogers Townsend & Thomas, PC filed a Notice of Intent to Appeal on December 6, 2012. On December 11, 2012, Rogers Townsend & Thomas, PC filed a Return to Motion to Dismiss in the Court of Common Pleas notifying the Circuit Court that the 2012-CP-40-06251 case was moot due to the Probate Court releasing the requested documents from the court's files.

Even though Rogers Townsend & Thomas, PC acknowledged that the matter involving the Summons and Petition for Writ of Mandamus or Writ of Certiorari that it filed in the Court of Common Pleas (2012-CP-40-06251) was moot, it continued to pursue the issue of the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Moore Sjoberg's estate planning documents. Rogers Townsend & Thomas, PC filed Grounds of Appeal on January 17, 2013 with this Court and the Court of Common Pleas (2012-CP-40-08088) stating their reasons for appealing the Order for Release of Client Documents, dated July 31, 2012; Amended Order for Release of Client Documents, dated August 24, 2012; and Order Denying Motion to Reconsider, dated December 4, 2012. The Appeal (2012-CP-40-08088) was dismissed by the Circuit Court on January 10, 2014 as being moot, due to Ms. Sjoberg's death on January 6, 2014.

STANDING OF PETITIONER TO BRING ACTION

Mr. Thomas and Rogers Townsend & Thomas, PC argued that Petitioner lacks standing to file the Motion for Sanctions. The Court previously addressed this issue in its January 2, 2015 Order, and hereby incorporates its previous findings. Additionally, although the action is captioned as "Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg," Paula S. Saine is the real party in interest pursuant to Rule 17, SCRCP, as Personal Representative of the Estate of Mary Beth Sjoberg under S.C. Code Ann. § 62-3-703(c). Moreover, Rule 8(f), SCRCP, provides that "[a]ll pleadings shall be so construed as to do substantial justice to all parties." Substantial justice is served by allowing Paula S. Saine to bring this action in her capacity as the Personal Representative of the Estate of Mary Beth Moore Sjoberg despite how the action is captioned.

PERSONAL JURISDICTION

Throughout these proceedings, Mr. Thomas and Rogers Townsend & Thomas, PC have continued to argue that the Court did not have personal jurisdiction over Ms. Sjoberg, as she was never personally served. The Court has thoroughly and sufficiently addressed this issue in its January 2, 2015 Order, and does not find it necessary to address that issue in this Order. Thus, the Court specifically incorporates the findings and the ruling of its January 2, 2015 Order Granting Motion for Sanctions with respect to the issue of personal jurisdiction over Ms. Sjoberg.

ATTORNEY-CLIENT PRIVILEGE

Mr. Thomas and Rogers Townsend & Thomas, PC argued that the Ms. Sjoberg's estate planning documents were protected by attorney-client privilege and work-product doctrine. Although the Court makes complete reference to its January 2, 2015 Order; nonetheless, due to Mr. Thomas' and Rogers Townsend & Thomas, PC's continued reliance on the attorney-client privilege, the Court feels it is important to restate portions of its prior Order regarding the attorney-client privilege argument. At the request of Amy Landers May, on behalf of RTT, on July 31 2012 the Court issued an Order for Release of Client Documents regarding the estate planning documents of Ms. Sjoberg. Subsequently, on August 24, 2012, an Amended Order for Release of Client Documents was filed. After the Court ordered Robert J. Thomas and Rogers Townsend & Thomas, PC to release Ms. Sjoberg's estate planning documents, Mr. Thomas and RTT filed a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File on August 30, 2012.

Pursuant to Rule 1.6 of the South Carolina Rules of Professional Conduct ("SCRPC"), a lawyer is generally prohibited from revealing information related to the representation of a client

unless the client gives informed consent or if the disclosure is permitted by subsection (b). Subsection (b)(7) states that "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to comply with other law or a court order." However, Comment 14 to Rule 1.6 provides:

> A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(7) permits the lawyer to comply with the court's order.

Rule 1.0(g) defines "informed consent" as "the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the material risks of and reasonably available alternative to the proposed course of conduct."

Paula Saine met with Robert J. Thomas and Mary Beth Sjoberg to discuss Ms. Sjoberg's Will in October of 2010 (Saine Affid. Para. 5). On November 3, 2010 Ms. Saine received a letter from Robert J. Thomas enclosing a copy of the draft of Ms. Sjoberg's Will and a copy of a Durable Power of Attorney naming Ms. Saine as the attorney in fact. (Saine Affid. Para. 6). Again, Ms. Saine met with Mr. Thomas and Ms. Sjoberg to discuss Ms. Sjoberg's Will and Ms. Saine received a second draft of Ms. Sjoberg's Will. (Saine Affid. Para. 7). On January 11, 2011, Robert J. Thomas provided Ms. Saine a copy of Ms. Sjoberg's executed Will, dated November 12, 2010. The original of the November 12, 2010 Will was filed for probate following Ms. Sjoberg's death. (Saine Affid. Para. 8). The fact that these events took place has not been disputed or denied by Robert J. Thomas and RTT.

Despite the Orders of this Court, Robert J. Thomas claimed that he could not turn over Ms. Sjoberg's estate planning documents because of attorney client privilege. However, he clearly had informed consent when he provided drafts of Ms. Sjoberg's Will, the Durable Power of Attorney, and Ms. Sjoberg's executed Will to Paula Saine. Further, Ms. Saine met with Mr. Thomas and Ms. Sjoberg to discuss Ms. Sjoberg's draft Wills. Ms. Sjoberg never executed a subsequent Will, and there is no evidence that she had ever withdrawn the informed consent she had previously given.

Moreover, the attorney client privilege was waived the moment Robert J. Thomas provided drafts of Ms. Sjoberg's estate planning documents to Ms. Saine. "The attorney-client privilege is owned by the client, and, therefore, can be waived by the client." Floyd v. Floyd, 365 S.C. 56, 86, 615 S.E.2d 465, 482 (Ct. App. 2005) (citing Booker, 260 S.C. at 254, 196 S.E.2d at 620). "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject matter." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct. App. 1984) (citing Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146 (D.S.C. 1975); U.S. v. Jones, 696 F.2d 1069 (4th Cir. 1982). Accordingly, the Order for Release of Client Documents and Amended Order for Release of Client Documents relate to the same subject matter that was waived – that is, Ms. Sjoberg's estate planning documents. At the very least, Robert J. Thomas and Rogers Townsend & Thomas, PC should have notified Ms. Saine that she was already in possession of a copy of Ms. Sjoberg's most recent Will and they were not aware of Ms. Sjoberg executing a subsequent Will, or the firm should have turned over the documents as requested by Ms. Saine and ordered by this Court.

In addition, Robert J. Thomas and Rogers Townsend & Thomas, PC should have provided the estate planning documents as permitted under Rule 1.6(b)(7). The Court issued an Order and the law permits the Court to "inquire into and consider any known lifetime gifts or the estate plan of the person." S.C. Code Ann. § 62-5-408(3)(b), 1976, as amended. Further the law instructs the Conservator and the Court to "take into account any known estate plan of the protected person . . . ." S.C. Code Ann. § 62-5-427.

Comment 15 to Rule 1.6 provides:

> Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable (emphasis added).

In the Court's Amended Order for Release of Client Documents, dated August 24, 2012, the Court clearly provides that any documents not provided to the Guardian *ad Litem* or Ms. Saine, shall be provided to the Probate Court for examination and safekeeping. If Robert J. Thomas and Rogers Townsend & Thomas, PC were concerned about Ms. Saine viewing the documents, they could have and should have turned the documents over to the Court and requested that the Court make a determination as to whether the documents should be disclosed to Ms. Saine as Temporary Guardian and Temporary Conservator. The Court gave Mr. Thomas and Rogers Townsend & Thomas, PC different options to comply with the Court's Orders, but they refused to do so and continued to prolong the production of Ms. Sjoberg's estate planning documents.

Mr. Thomas and Rogers Townsend & Thomas, PC also argued that the Court failed to consider Comment 14 to Rule 1.6, SCRPC, that states that "[a]bsent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law . . . ." However, that comment also states that "[i]n the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4 . . . ." Pursuant to Rule 1.14, SCRPC, "[w]hen the lawyer reasonably believes that the client has diminished capacity . . . and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals . . . that have the ability to protect the client." Here, Ms. Saine as Temporary Guardian and Temporary Conservator had the ability to protect the interests of Ms. Sjoberg. Alternatively, Ms. Hightower, Guardian *ad Litem* for Ms. Sjoberg could have been consulted with regard to the production of Ms. Sjoberg's estate planning documents to protect the interests of Ms. Sjoberg. However, Mr. Thomas and Rogers Townsend & Thomas, PC failed to consult with anyone regarding the Order for Release of Client Documents and Amended Order for Release of Client Documents and, instead, unilaterally decided not to comply with the Court's Orders.

S. C. FRIVOLOUS CIVIL PROCEEDINGS SANCTION ACT and RULE 11, S.C. RULES OF CIVIL PROCEDURE

Mr. Thomas and Rogers Townsend & Thomas, PC argued that the Motion for Sanctions was filed out of time and that the Court did not consider certain factors in granting its award. For ease of reference, the Court restates the background and standard for granting sanctions. The Motion for Sanctions is brought under the South Carolina Frivolous Civil Proceedings Sanction

Act (SCFCPSA), as codified in S.C. Code Ann. § 15-36-10 (Supp. 2012), and Rule 11 of the South Carolina Rules of Civil Procedure.

The S. C. Frivolous Civil Proceedings Sanction Act

The SCFCPSA applies a "reasonable attorney" standard to actions taken in a civil or administrative action. Southeastern Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (Ct. App. 2011). Pursuant to S.C. Code Ann. § 15-36-10(A)(4), an attorney may be sanctioned for:

> (a) filing a frivolous pleading, motion, or document if:
> (i) the person has not read the frivolous pleading, motion, or document;
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
> (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defenses upon which the proceedings are based;
> (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
> (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

In determining whether an attorney has violated the provisions of the SCFCPSA, the Court shall take into account:

> (1) the number of parties;
> (2) the complexity of the claims and defenses;
> (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
> (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
> (5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
(7) other factors the court considers just, equitable, or appropriate under the circumstances.

S.C. Code Ann. § 15-36-10(E).

The party making the motion for sanctions under the SCFCPSA has the burden of proof. S.C. Code Ann. § 15-36-10(C)(2). To meet this burden of proof, the moving party must show that the preponderance of evidence supports the imposition of sanctions. Id.

Rule 11 of the SCRCP

The Motion for Sanctions is also brought under Rule 11, SCRCP. Specifically, Rule 11(a) provides that:

> Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay...
>
> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader of movant. If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney's fee.

Applicability of SCFCPSA to the Facts in this Matter

Robert J. Thomas and Rogers Townsend & Thomas, PC have argued that the SCFCPSA should not apply because the Petitioner failed to timely file the Motion for Sanctions. Specifically, their argument hinges on the assertion that this Probate Court no longer had jurisdiction to hear Petitioner's Motion for Sanctions after December 14, 2012, as the Order Denying RTT's Motion to Reconsider the Orders for Release of Client Files was filed on December 4, 2012. In addition, RTT argues that the Court's Order Denying RTT's Motion to

Reconsider the Orders for Release of Client Documents was a "final judgment" as to RTT, thereby triggering the requirement that Petitioner file her Motion for Sanctions within ten days of the date of that Order. In support of their argument, Thomas and RTT cite a recent South Carolina Supreme Court opinion in which the Court found that:

> Motions made pursuant to the FCPSA are post-trial motions. *See* S.C. Code Ann. 15-36-10(C)(1)(Supp.2012) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous."). As such, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA. *See* In re Beard, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004) (referring to motions made under the FCPSA as "post-trial motions for sanctions" and finding that the general ten-day limitation for post-trial motions applies to motion made pursuant to the FCPSA); Pittman v. Republic Leasing Co., 351 S.C. 429, 432-33, 570 S.E.2d 187, 189-90 (Ct. App. 2002) ("**Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment.** Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); Rutland v. Holler, Dennis, Corbett, Ormond, & Garner (Law Firm), 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006) ("[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment." (alteration in original)). Holmes v. East Cooper Community Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483, 495 (2014) (emphasis added).

Based on the preceding opinion, Mr. Thomas and Rogers Townsend & Thomas have presented what they believe to be strong arguments regarding their contention that this Court lacks jurisdiction to hear any "post-trial" motions if filed more than ten days after the filing of the Order Denying RTT's Motion to Reconsider the Orders for Release of Client Files.

In making those arguments, Mr. Thomas and RTT attempt to conform the procedural history in this matter to the concepts of "trial," "post-trial," "verdict," and "final judgment." However, there has not been a "trial" regarding the issue of whether Robert J. Thomas and RTT were required to turn over Mary Beth Moore Sjoberg's estate planning documents. Pursuant to

S.C. Code Ann. § 62-5-427, 1976, as amended, in exercising the powers granted to the court or to the conservator by the court, the court is directed to take into account any known estate plan of the protected person. Accordingly, when an inquiry was made of RTT regarding that, the court was advised by Amy Landers May, on behalf of the firm, that an order would be needed in order for the firm to comply with the request. The background of this matter, as detailed in the first part of this Order, recounts the events that took place with regard to this issue, finally culminating in an appeal that was filed with the Court of Common Pleas after the Order Denying RTT's Motion to Reconsider the Orders for Release of Client Files was filed on December 4, 2012. So, as to the issue at the center of Robert J. Thomas's and RTT's refusal to comply with the very court order the firm requested, in other words the issue of whether the estate planning documents of Mrs. Sjoberg would be turned over, there has never been a "trial," simply an original order and an amended order and a series of motions and memorandums. Accordingly, there was no "verdict" and there could not be "post-trial" motions or any other "post-trial" pleadings in the sense contemplated by In re Beard, *supra*, as there has never been a proceeding that led to the final adjudication regarding the key issue in case.

With regard to whether there was a "final judgment" in this matter the Court agrees with the Petitioner that there was no final judgment, as ". . . a final order on the Petitions for Appointment had not been made and the appeal was interlocutory." In this case the appeal is interlocutory because a ruling by the circuit court as to whether or not RTT had to release the client files would not have been determinable of the ultimate controversy, but a ruling that was necessary for a suitable adjudication of the merits of the case, which included whether this Court had jurisdiction to appoint a guardian and conservator for Mary Beth Moore Sjoberg, whether Paula Saine was an appropriate person to be appointed as her mother's guardian and conservator,

and the Court's ability to exercise its statutory authority to permit the temporary conservator to make certain decisions regarding the management of the assets of Mrs. Sjoberg.

In addition, as stated in the Order Granting Motion for Sanctions, in guardianship and conservatorship matters the court retains jurisdiction until the protected person regains capacity or dies and the matter is closed. Robert J. Thomas and RTT misconstrue the application of both In re Beard and Pittman to this case, as there is clear statutory authority for the continued jurisdiction of the probate court with regard to the appointments it makes of a guardian and/or conservator, as well as for court oversight of the authority exercised by the guardian and/or conservator after an order has been entered. Among the sections of the Probate Code to address the Court's ongoing jurisdiction and oversight authority are S.C. Ann. §§ 62-5-313, 62-5-408, 62-5-413, and 62-5-416. Accordingly, whether or not the arguments of Mr. Thomas and RTT are considered to be persuasive depends on an understanding of the statutory provisions that have created the responsibility of the court to continue to supervise the actions of guardians and conservators, and for them to report to the court regarding their activities.

It should be noted that the Court's ability to proceed with a permanent appointment of a guardian and conservator for Ms. Sjoberg was delayed due to the actions of Mr. Thomas and Rogers Townsend & Thomas, PC. Throughout the proceedings, Mr. Thomas and Rogers Townsend & Thomas, PC argued that the Court lacked personal jurisdiction over Ms. Sjoberg despite the Court's previous rulings regarding that issue. The underlying Orders from which the appeal was taken questioned the authority of the Court to issue those Orders based on the lack of personal jurisdiction over Ms. Sjoberg. Thus, a permanent guardian and permanent conservator could not be appointed until the Circuit Court made its ruling on the underlying Orders

determining the Court's authority to issue those Orders, and the actual issues that were in controversy were never ~~actually~~ decided on appeal because of the death of Mrs. Sjoberg.

Therefore, the Motion for Sanctions was timely filed and the Court can consider the imposition of sanctions based upon the S. C. Frivolous Civil Proceedings Sanction Act.

Applicability of Rule 11, SCRCP to the Facts in this Matter

Robert J. Thomas and Rogers Townsend & Thomas, PC have argued that sanctions pursuant to Rule 11 of the SCRCP should not apply because the Petitioner failed to timely file the Motion for Sanctions. Like their argument regarding the SCFCPSA, the argument of Thomas and RTT regarding whether sanctions can be imposed pursuant to Rule 11 hinges on their assertion that the Motion was not timely filed. However, unlike the SCFCPSA there is no statutory language or case law in South Carolina that addresses what time limit is proper with regard to filing a Motion for Sanctions under Rule 11.

The applicable case law regarding Rule 11 of the South Carolina Rules of Civil Procedure is as follows:

"Under [Rule 11(a)], a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). "The sanction may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." Id. Rule 11 is evaluated by a subjective standard. Ex parte Bon Secours-St. Francis Hosp., Inc., 393 S.C. 590, 598-99, 713

S.E.2d 624, 628-29 (2011). The decision whether to impose sanctions sounds in equity. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).

Nevertheless, in support of their position Thomas and RTT cite a federal case from the 4th Circuit Court of Appeals and several North Carolina cases which stand for the proposition that a long delay in filing the Motion is unacceptable and that a reasonableness test should be applied in determining whether the filing of the Motion was timely. The standard for the reasonableness test is whether the Rule 11 Motion was filed within a "reasonable" amount of time after the alleged impropriety was discovered.

As previously stated during the discussion of the applicability of the SCFCPSA to this issue, with reference to the issue at the center of Robert J. Thomas's and RTT's refusal to comply with the very court order the firm requested there was never a "trial," simply an original order, an amended order, and a series of motions and memorandums. Therefore, there was not a "verdict" or "final judgment" before Robert J. Thomas and RTT appealed the Court's Order Denying RTT's Motion to Reconsider the Orders for Release of Client Documents. The appeal to the Circuit Court was taken because there was no other option available to Thomas and RTT based on its position that it would continue to refuse to turn over Mrs. Sjoberg's estate planning documents, as ordered by this Court. Accordingly, until there was a ruling from the Circuit Court regarding the Order Denying RTT's Motion to Reconsider there could be no "final decision" regarding the discovery of an "alleged impropriety," as Mr. Thomas and RTT referenced in citing the North Carolina case of Griffin v. Sweet in their Reply to Petitioner's Memorandum In Opposition to Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions.

Similarly, the fact that there was not a "verdict" or "final judgment" in this matter until the Circuit Court issued a dismissal and the fact that the issues in controversy were never actually decided on appeal because of the death of Mrs. Sjoberg, means that it was not possible to identify a date from which to consider filing the Motion for Sanctions until the Circuit Court issued its dismissal. Based on the fact that the Petitioner filed her Motion for Sanctions within ten days of when she received the Order of Dismissal from the Circuit Court, her Motion for Sanctions was timely filed and it was filed within a reasonable period of time.

Therefore, the Court can consider whether the actions of Robert J. Thomas and Rogers Townsend & Thomas, PC were those of a reasonable attorney under the circumstances. Here, the Court finds the actions of Mr. Thomas and Rogers Townsend & Thomas, PC to be unreasonable under the circumstances, for the reasons set forth below.

CONCLUSION

"[A] Rule 59(e) motion is not a vehicle for obtaining post judgment reargument on issues already decided." Thompson v. Direct Impact Co., 63 F.Supp.2d 721, 724 (E.D. Va. 1998) aff'd, 188 F.3d 503 (4th Cir. 1999). Here, many arguments raised by Mr. Thomas and Rogers Townsend & Thomas, PC have been decided by previous Orders which have further delayed this matter. The Court restates its conclusion from its January 2, 2015 which, after considering the factors set forth in S.C. Code Ann. § 15-36-10(E), does not change.

The evidence shows that the actions of Robert J. Thomas and/or the firm of Rogers Townsend and Thomas, PC were not reasonable, given the facts and circumstances of this case. Mr. Thomas, and Rogers Townsend and Thomas, PC, by way of representation of Mr. Thomas and on its own behalf, elected to pursue two separate courses of action long past the point reasonably necessary to achieve the results it was seeking.

First, in response to the request of Rogers Townsend and Thomas, PC that the Court issue an Order to affect the release of Ms. Sjoberg's estate planning documents, the Court did so. An Order was filed on July 31, 2012 that ordered Rogers Townsend & Thomas, PC to turn over Ms. Sjoberg's estate planning documents, and when the documents were not released an Amended Order for Release of Client Documents was filed on August 24, 2014, which offered additional options to the firm as to whom the documents could be released.

Despite this, on August 30, 2012 Rogers Townsend & Thomas, PC chose to file a "Motion to Reconsider and Claim of Privilege Pending Review of the Court's File" instead of turning over the information, and on September 17, 2012 Rogers Townsend & Thomas, PC filed a Summons and Petition for Writ of Mandamus or Writ of Certiorari, in the Court of Common Pleas. The Petition requested an Order from the Circuit Court to command the Probate Court to turn over the Mary Beth Sjoberg Guardianship and Conservatorship files. On the same day, Rogers Townsend & Thomas, PC filed a Memorandum in Support of Motion to Reconsider with this Court. On September 25, 2012 the files were provided to Rogers Townsend & Thomas, PC and Robert P. Wood executed a Receipt of Documents on behalf of Rogers Townsend & Thomas, PC. The Court issued an Order Releasing Documents and Protective Order on October 18, 2012, *nunc pro tunc* to September 25, 2012 regarding the release of the Guardianship and Conservatorship files. Despite that, Rogers Townsend & Thomas, PC filed a Second Memorandum in Support of Motion to Reconsider on October 25, 2012. In lieu of oral argument and in the interest of judicial economy, the Court asked the parties to submit Memorandum pursuant to Rule 59(f), SCRCP. On December 4, 2012, the Court issued an Order Denying Motion to Reconsider. Rogers Townsend & Thomas, PC then filed a Notice of Intent to Appeal on December 6, 2012. Finally, on December 11, 2012 Rogers Townsend & Thomas, PC filed a

Return to Motion to Dismiss in the Court of Common Pleas notifying the Circuit Court that the case was moot due to the Probate Court releasing the requested documents from the court's files. It was completely unreasonable and frivolous for Robert J. Thomas and Rogers Townsend and Thomas to continue to pursue the matter of demanding that they receive the Guardianship and Conservatorship files, even after they already had the files in hand.

Second, once Rogers Townsend and Thomas, PC had the Guardianship and Conservatorship files in hand it continued to pursue the issue of contesting the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Moore Sjoberg's client records. Rogers Townsend & Thomas, PC filed Grounds of Appeal on January 17, 2013 with this Court and the Court of Common Pleas stating their reasons for appealing the Order for Release of Client Documents, dated July 31, 2012; Amended Order for Release of Client Documents, dated August 24, 2012; and Order Denying Motion to Reconsider, dated December 4, 2012. The Appeal to the Circuit Court was dismissed by the Honorable DeAndrea G. Benjamin on January 10, 2014 as being moot, due to Ms. Sjoberg's death on January 6, 2014.

The continued efforts by Mr. Thomas and Rogers Townsend and Thomas, PC to contest the release of Ms. Sjoberg's estate planning documents was particularly unreasonable and frivolous. Moreover, it was unreasonable and frivolous to contest the release of Ms. Sjoberg's estate planning documents when Robert J. Thomas previously provided Ms. Saine draft copies of those documents thereby waiving any claim to attorney-client privilege. The language of the S.C. Probate Code, Article 5, clearly requires that a conservator take into account the estate planning of the incapacitated person. After refusing to comply with this Court's Orders for eighteen months, it was only upon Ms. Sjoberg's death in January of 2014 that it became known that the Will that Mr. Thomas and Rogers Townsend and Thomas, PC refused to release was, in

fact, the very same document that Ms. Sjoberg had previously given informed consent in 2010 for Mr. Thomas to give a copy of to Ms. Saine. In fact, the Will submitted for probate upon Mrs. Sjoberg's death was the same Will that Ms. Saine had been given a copy of by Mr. Thomas in 2011. Rather than continuing to fight the release of documents, it would have been so simple for Mr. Thomas to inform Paula Saine that the original documents in his possession were the same as those she already had; therefore, he would not give her the original of the Will. However, Mr. Thomas chose not to do that.

In his numerous consultations with Pope Johnson, Mr. Thomas chose, for whatever reason, not to suggest affirmatively pursuing challenging personal jurisdiction in a responsive pleading, or using the tools available to all attorneys provided by Rule 12 of the SCRCP. Michael J. Polk, as an independent attorney appointed by the Court to review the procedural issues, and Bea Hightower, Esquire as Guardian *ad Litem* for Ms. Sjoberg, concluded that it would not be in Ms. Sjoberg's best interests to begin the proceedings again and, in fact, no one contested the Court's jurisdiction over Mrs. Sjoberg.

The effect of all of this was to tie up an inordinate amount of the Court's time, along with the time of the court's staff, as well as the time of Ms. Caughman, Ms. Saine, and Ms. Hightower. It also created the need to focus a great deal of unnecessary attention, energy, and monetary resources on things that had nothing to do with Ms. Sjoberg's actual care or her well-being in the last few years of her life. The actions of Robert J. Thomas and Rogers Townsend and Thomas, PC were not those of a reasonable attorney and a reasonable law firm, and were frivolous based on the circumstances described herein.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that after carefully considering, reviewing, rereading motions and supporting memoranda of counsel,

and after due consideration of the all the factors set out in S.C. Code Ann. § 15-36-10(E), Robert J. Thomas and Rogers Townsend & Thomas Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions is **DENIED.**

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 13, 2015
Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

RICHLAND COUNTY FILED
2013 MAR -6 PM 3:56
JEANETTE W. McBRIDE C.C.P.&G.S.

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of March, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride
Clerk of Court, Jeanette McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	Civil Action No.: 2012-CP-40-6251 **ORDER**

RICHLAND COUNTY FILED
2013 MAR -6 PM 3:58
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter came before the Court for a hearing on December 12, 2012 on Richland County Probate Court's (the "Probate Court") Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP and 12(b)(6), SCRCP. Present at the hearing were Robert Wood, Esquire, counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively "the Petitioners"), and Desa Ballard, Esquire, counsel for the Probate Court.

On September 17, 2012, Petitioners filed a Writ of Mandamus or Writ of Certiorari, commanding the Probate Court to turn over certain files. Petitioners claim that they sought these files to determine whether the Probate Court had authority to issue an Order requiring Petitioners to turn over various attorney-client privileged documents. On October 18, 2012, the Probate Court, in an exercise of its discretion, issued an Order releasing certain file materials to Mr. Wood and a Protective Order regarding those materials. Mr. Wood indicated that he received the file materials on September 25, 2012, and that the matters addressed in the Writ of Mandamus were now moot. *See* Return to Motion to Dismiss, Dec. 11, 2012.

The Probate Court argues that Petitioner's Writ of Mandamus is inappropriate because the release of the documents was a matter of judicial discretion. The Probate Court urges this Court to dismiss the case on the merits as a matter capable of repetition yet evading review. *See Sloan v. Department of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008). This is not a case in which the matter became moot due to passage of time, but rather, because the Probate Court decided on its own volition to release the documents. The Probate Court created the mootness, yet now seeks to have the merits addressed. The only reason the matter evaded review was because the Probate Court took action.

SCANNED

This Court notes that pursuant to the Probate Court Order, Petitioners had notice of the July 27, 2011 Status Hearing and the opportunity to appear at the October 26, 2011 hearing to determine capacity of Petitioner's former client. Petitioners also had the opportunity to challenge the release of documents they claim were protected by attorney-client privilege. Further, Petitioners had the opportunity to request intervention in this case, as they represented the party whose documents were ordered to be produced. Additionally, Petitioners could have appealed the Orders, petitioned the Probate Court to seal the documents or protect them from review by the parties, or asked the Probate Court to clarify its Order as to whom the documents could be released. Therefore, Petitioners had a choice among remedies.

The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code. Petitioner's Writ of Mandamus did not request that the Probate Court perform a ministerial duty, but was a challenge to authority of the Probate Court to issue the Order requesting that Petitioners produce the documents of the incapacitated person to the appointed conservator. Therefore, a Writ of Mandamus is not appropriate.

ORDER

For all of the reasons set forth above, it is **ORDERED** that the action is dismissed.

AND IT IS SO ORDERED.

Alison Renee Lee

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 6, 2013

#2

Robert P. Wood
PO Box 100200
Columbia, SC 292023200

CP14

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	)	Civil Action No.: 2012-CP-40-6251 **ORDER**

RICHLAND COUNTY FILED
2013 APR -8 AM 11:35
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Petitioners to alter or amend this Court's March 6, 2013 Order. The Motion for Reconsideration was filed with the Clerk of Court on March 22, 2013.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Petitioners' Motion to Reconsider the Order Granting Respondent's Motion to Dismiss. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 5, 2013

SCANNED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4008088

Mary Beth Moore Sjoberg

PLAINTIFF(S)

Paula S. Saine el. Al.

DEFENDANT(S)

RICHLAND COUNTY FILED 2013 SEP 10 AM 10:18 JEANETTE W. SCRIDE CLERK OF COURT

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : under agreement

INFORMATION FOR THE PUBLIC INDEX

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		$
		$

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Circuit Court Judge MB Judge Code 2161 Date 08/30/2013

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of Sept 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood
ATTORNEY(S) FOR THE PLAINTIFF(S)

Rita Bragg Caugham A. Bea Hightower
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

COPY

FILED

11 APR 22 PM 3:56

RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

SUMMONS

PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

2011 GC40 00048

PETITIONER,)

v.)

MARY BETH MOORE SJOBERG,)
AND/OR HER GUARDIAN-AD-LITEM,)
AND PAULA S. SAINE)

RESPONDENTS.)

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

RTT SJOBERG 000189

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

Rogers Townsend & Thomas, PC

APPELLANT

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP408088

Paula Saine, As the Attorney-In-Fact For Mary Beth Moore Sjoberg and as the Daughter of Mary Beth Moore Sjoberg and A. Bea Hightower, As Guardian ad Litem for Mary Beth Sjoberg

RESPONDENT

Submitted by: _____	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: This appeal is dismissed because the appeal is moot.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

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Circuit Court Judge _____ **Judge Code** 2161 **Date** 1-10-14

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Jan, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Wood
ATTORNEY(S) FOR THE APPELLANT

A. Bea Hightower, Rita Bragg Caughman, and Michael Polk
ATTORNEY(S) FOR THE RESPONDENT(S)

Court Reporter Debbie McCurdy

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT

FILED

11 APR 22 PM 3:56

PROBATE JUDGE
RICHLAND COUNTY, S.C.

PETITION FOR FINDING

THE MATTER OF
MARY BETH MOORE SJOBERG

CASE NUMBER: 2011 GC40 00048

☒ INCAPACITY
☒ APPOINTMENT OF
☒ GUARDIAN
☐ SUCCESSOR GUARDIAN

Applicant/Petitioner: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone: 803-261-4566

I. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information – Allegedly Incapacitated Person

Name: Mary Beth Moore Sjoberg Age: 81
Date of Birth 09/23/1929
Address: 3825 Linwood Road
City/State/Zip: Columbia, SC 29205
Telephone: 803-782-4766

To my knowledge, above named ☒ *DOES* ☐ *DOES NOT* have a health care power of attorney (See attached as Exhibit "A").

To my knowledge, above named ☐ *DOES* ☒ *DOES NOT* have a living will (Declaration of a Desire for a Natural Death.)

3. Venue for this proceeding in this county because the subject:

☒ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of allegedly incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Incapacitated Person
Paula S. Saine	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1993	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	08/28/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild

(use additional sheet if necessary)

5. The nature and degree of incapacity is as follows:

Memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

II. COMPLETE THIS SECTION IF APPOINTMENT IS SOUGHT.

1. Is it your belief that the allegedly incapacitated person is in need of a guardian/successor guardian as a means of providing continuing care and supervision of the person of said incapacitated person?
☒ YES ☐ NO If no, please explain.

2. The extent to which the guardian should be permitted to give consents or approvals that may be necessary to enable the allegedly incapacitated person to receive medical or other professional care, counsel, treatment or services is as follows:

Full extent, consistent with the allegedly incapacitated person's executed health care power of attorney. See attached as Exhibit "A".

3. The nature and extent of the care, assistance, protection, or supervision which is necessary or desirable for the allegedly incapacitated person under the circumstances is as follows:

Full extent, consistent with the allegedly incapacitated person's executed durable power of attorney. See attached as Exhibit "B".

4. Has a guardian appointed by a Will accepted such appointment?
☒ NO ☐ YES If yes, please explain.
N/A

5. I request the appointment of:

Name: Paula S. Salne
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
(H): 803-261-4566
E-mail: paulas@sc.rr.com

whose priority for appointment as guardian for the subject is as follows:

☐ a person nominated to serve as guardian by the allegedly incapacitated person
☒ an attorney-in-fact appointed by the allegedly incapacitated person pursuant to Section 62-5-501
☐ spouse of the allegedly incapacitated person
☐ adult child of the allegedly incapacitated person
☐ parent of the allegedly incapacitated person
☐ other relative of the allegedly incapacitated person (Specify): ____
☐ nominated by the person who is caring for the allegedly incapacitated person or paying benefits to him/her
☐ Other (specify) ____

6. Is it necessary to appoint a temporary guardian for the subject until a hearing can be held on this Petition?
☒ NO ☐ YES If yes, please state reasons.

III. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. ☒ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.

2. ☒ I request that the Court determine that the need for the appointment of a guardian is proper, and that the Court appoint Paula S. Saine as the guardian for the above person and that Letters of Guardianship be issued to the guardian.

3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship
Mary Beth Moore Sjoberg	8825 LinWood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney in fact; Sole surviving child

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-251-4566

Attorney: Rita Bragg Cullum
Address: Ellis, Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202
E-mail: rcullum@ellislawhorne.com
Telephone (O): 803-254-4190

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the Incapacitated person of Mary Beth Moore Sjoberg.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula G. Sajne
Name: Paula G. Sajne
Address: 3105 Grace Hill Road
Columbia, SC 29204
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 808-261-4566

FILED

APR 22 PM 3:56

RICHLAND COUNTY PROBATE JUDGE

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Moore Sjoberg ("Principal"), hereby appoint Paula Saline of 3105 Grace Hill Road, Columbia, SC 29204 (Telephone: (803) 261-4566) as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence in accordance with the provisions of South Carolina Code §62-5-504, as amended.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible.

Accordingly, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

4. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

5. ORGAN DONATION

My agent may MBS / may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

A. MBS GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my Agent believes the burdens of the treatment outweigh the expected benefits. I want my Agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

B. _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, is expected to result in death within a relatively short period of time; or
b. if I am in a state of permanent unconsciousness.

C. _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that:

MBS I want to receive these forms of artificial nutrition and hydration, but they may be withheld or withdrawn by my Agent under the conditions given in paragraph 6 above.

_____ I want to receive these forms of artificial nutrition and hydration, and they may not be withheld or withdrawn by my Agent.

8. SUCCESSORS

If an Agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an Agent who is my spouse is divorced or separated from me, I name the following as successors to my Agent.

Alternate Agent: John Saine
Address: 3105 Grace Hill Road, Columbia, SC 29204
Telephone: (803) 261-4566

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 14th day of October, 2010.

Signature: Mary Beth Sjoberg
Mary Beth Moore Sjoberg

WITNESS STATEMENT

We, David C. Sojourner, Jr. and Gail R. Swayne, declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that she signed or acknowledged this Health Care Power of Attorney in our presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence. We are not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. We are not directly financially responsible for the principal's medical care. We are not entitled to any portion of the principal's estate upon her decease, whether under any will or as an heir by intestate succession, nor are we the beneficiary of an insurance policy on the principal's life, nor do we have a claim against the principal's estate as of this time. Neither of us are the principal's attending physician, nor an employee of the attending physician. Neither of us is an employee of a health facility in which the principal is a patient. We are not appointed as Health Care Agent or Successor Health Care Agent by this document.

Signature: David C Sojourner Jr. Date: October 14, 2010
Witness

Signature: Gail R Swayne Date: October 14, 2010
Witness

Subscribed, sworn to, and acknowledged before me by Mary Beth Moore Sjoberg, the Principal, and subscribed and sworn to before me by David C. Sojourner, Jr., witness, this 14th day of October, 2010.

Gail R Swayne (SEAL)
Notary Public for South Carolina
My Commission Expires: September 8, 2020

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. I hereby authorize all health care providers, including physicians, nurses and all other persons or entities who may have provided, or be providing, me with any type of health care, to disclose all of my protected health information:

a. To any agent designated in a Durable Power of Attorney or Health Care Power of Attorney signed by me when asked by my agent to do so for the purpose of determining my capacity as defined in the power of attorney or by governing law.

b. To the trustee, or a designated successor trustee, of any trust of which I am a beneficiary or a trustee when asked to do so for the purpose of determining my capacity as defined in the trust or by governing law.

c. To a guardian ad litem, if one is appointed for me, for the purpose of determining whether, and to what extent, a guardianship, conservatorship, or other protective proceeding for me is necessary or desirable.

2. This authorization is intended to provide my health care providers with the authorization necessary to allow each of them to disclose my protected health information to the persons described in Paragraphs a through c above, for the purpose of allowing each of them to make the specified determinations regarding my capacity or need for protective proceedings.

3. Information disclosed by a health care provider pursuant to this authorization is subject to re-disclosure and may no longer be protected by the privacy rules of 45 CFR, Section 164.

4. This authorization may be revoked by a writing signed by me or by my personal representative.

5. This authorization shall expire at the time of my death unless validly revoked prior to that date.

6. Any health care provider may rely upon a photocopy of this document for purposes of making any disclosure authorized herein.

Executed this 14th day of October, 2010.

Mary Beth Sjoberg

Mary Beth Moore Sjoberg

Witness

FILED

11 MAR 22 PM 3:55

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF RICHLAND	
IN THE MATTER OF	
MARY BETH MOORE SJOBERG	SUMMONS
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	2011 GC40 00047
PETITIONER,	
v.	
MARY BETH MOORE SJOBERG, AND/OR HER GUARDIAN AD LITEM, AND PAULA S. SAINE	
RESPONDENTS.	

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, PA
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)
) PETITION FOR
IN THE MATTER OF)
MARY BETH MOORE SJOBERG)

FILED
11 MAR 22 PM 3:55

CASE NUMBER: 2011 GC40 00047

☒ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

Applicant/Petitioner: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204

Telephone: 803-261-4566

1. Nature of interest of undersigned:
Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information -- Minor/Incapacitated Person

Name:	Mary Beth Moore Sjoberg	Age:	81
Date of Birth:	09/23/1929		
Last Four Digits of Social Security Number:	XXX-XX-5077		
Address:	3825 Linwood Road		
City/State/Zip	Columbia, SC 29205		
Telephone (Home):	803-782-4766	(Office/other):	NA

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a will

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a power of attorney

3. Venue for this proceeding is proper in this county because the above minor/incapacitated person:
☒ resides in this county
☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:
Petition for Finding Incapacity and Appointment of Guardian is being filed contemporaneously with this Petition for Appointment of Conservator.

5. Information -- Family (list nearest relative first) of allegedly incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship
Paula S. Saine	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1993	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	06/28/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild

(use additional sheet if necessary)

6. The following is a general statement of the property, assets and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value
Real Estate	950,000.00
Bank accounts and Certificates of Deposit	60,000.00
Stocks and Bonds and other securities	466,000.00

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

The allegedly incapacitated person suffers from memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

8. I request the appointment of:

Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
Telephone (H): 803-261-4566

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides
- ☐ individual or corporation nominated by the protected person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☒ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by will of deceased parent
- ☐ other relative of protected person (specify): _____
- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify): _____
- ☐ other (specify): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Mary Beth Moore Sjoberg	3825 Linwood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney in fact; Sole surviving child

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint Paula S. Saine as the conservator for the above minor/incapacitated person; and that Letters of Conservatorship be issued to the conservator.

Executed this 22nd day of April, 2011.

Signature: Paula S Saine

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22nd day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7-11-2015

Signature: Paula S Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of .

Executed this 22nd day of April, 20 11 .

SWORN to before me this 22nd day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7-11-2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF RICHLAND	
IN THE MATTER OF	
MARY BETH MOORE SJOBERG	CONSENT
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	2011 GC40 00048
PETITIONER,	
v.	
MARY BETH MOORE SJOBERG, AND/OR HER GUARDIAN AD LITEM, AND PAULA S. SAINE	
RESPONDENTS.	

THE UNDERSIGNED PAULA S. SAINE, as the attorney-in-fact for Mary Beth Moore Sjoberg and as the daughter of Mary Beth Moore Sjoberg, hereby (1) acknowledges receipt of and (2) voluntarily accepts service of the Petition for Finding Incapacity and Appointment of Guardian, and consents to the relief requested in the Petition for Finding Incapacity and Appointment of Guardian.

Paula S. Saine

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
COUNTY OF RICHLAND	)	
IN THE MATTER OF	)	
MARY BETH MOORE SJOBERG	)	**CONSENT**
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	)	**2011 GC40 _____**
PETITIONER,	)	
v.	)	
MARY BETH MOORE SJOBERG, AND/OR HER GUARDIAN AD LITEM, AND PAULA S. SAINE	)	
RESPONDENTS.	)	

FILED
11 APR 22 PM 3:5
ANN H. CULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THE UNDERSIGNED PAULA S. SAINE, as the attorney-in-fact for Mary Beth Moore Sjoberg and as the daughter of Mary Beth Moore Sjoberg, hereby (1) acknowledges receipt of and (2) voluntarily accepts service of the Petition for Protective Order and Appointment of Conservator, and consents to the relief requested in the Petition for Protective Order and Appointment of Conservator.

Paula S. Saine

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00048

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the and Summons and Petition for Incapacity and Appointment of Guardian, the originals of which are on file with the Probate Court, by the following method:

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

to each of the following persons at the addresses shown:

	NAME	ADDRESS
1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
2.	Angela M. Kirby, Esquire Robert J. Thomas, Esquire Amy Landers May, Esquire	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210

FILED
11 JUN -8 PM 2:12
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Signature: _____
Name: Matt Gilreath, Courier
Ellis, Lawhorne & Sims, P.A.
Address: Post Office Box 2285
Columbia, South Carolina 29202
Telephone (O):(803) 254-4190

SWORN to before me this 6th
day of June, 2011

_____
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00047

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the Summons and Petition for Protective Order and Appointment of Conservator, the originals of which are on file with the Probate Court, by the following method:

FILED
JUN -8 PM 2:12
AMY H. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

to each of the following persons at the addresses shown:

	NAME	ADDRESS
1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
2.	Angela M. Kirby, Esquire Robert J. Thomas, Esquire Amy Landers May, Esquire	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210

Signature: Matthew Gilreath
Name: Matt Gilreath, Courier
Ellis, Lawhorne & Sims, P.A.
Address: Post Office Box 2285
Columbia, South Carolina 29202
Telephone (O):(803) 254-4190

SWORN to before me this 6th
day of June, 2011

Ami M. Meeks
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE PROBATE COURT Case Nos. 2011-GC-40-00047 2011-GC-40-00048

EX PARTE ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

MOTION TO RECONSIDER
AND
CLAIM OF PRIVILEGE
PENDING REVIEW OF THE COURT'S FILE

TO THE COURT AND TO COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the Court, Rogers Townsend & Thomas, PC and Robert J. Thomas (collectively the "Firm") will move the Court to reconsider its Order of July 31, 2012, its Amended Order of August 24, 2012 (collectively the "Production Orders"), and its oral order declining to allow the Firm to review the Court's file in this case.[1] This motion is based on the grounds that the Firm has been denied access to the Court's records so that the Firm can:

a) determine whether the Production Orders are lawful; and

b) determine the scope of the rights and powers of those to whom the production is commanded.

Pending access to the Court's records, due to the work product doctrine and the attorney-client privilege, the Firm is informed and believes, and respectfully asserts, that the

[1] The Firm received written notice of entry of the first Production Order on August 21, 2012. The Firm waives its right to receive a written order denying it access to the Court's file. And the Firm waives any right to written notice of entry of the Second Production Order.

South Carolina Rules of Professional Conduct prohibit it from complying with the Production Orders.

Specifically, the Production Orders require the Firm to produce documents that would be, but for the apparent appointment of Paula S. Saine as Temporary Guardian and Conservator of Mary Beth Sjoberg and A. Bea Hightower as attorney and Guardian ad Litem for Ms. Sjoberg, protected by the work product doctrine and the attorney-client privilege. (We will refer to the Order or Orders we assume to exist that apparently appoint Ms. Saine and Ms. Hightower to their positions as the "Appointment Orders.") Nothing could be more sensitive and confidential than a living person's will and estate planning documents unless it is the living person's lawyer's draft work papers.

Exceedingly mindful of the duty of confidentiality created by Rule 1.6(a) of the South Carolina Rules of Professional Conduct, and also mindful of the distrust between Ms. Sjoberg and Ms. Saine that existed when the Court apparently entered, *ex parte*, one or more of the Appointment Orders, the Firm has determined, in good faith, that it cannot blindly assume that the Production Orders are lawful and proper in scope. But the Firm's request to see the Court's file to make that determination was denied.

Hence, before the Firm will exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to reveal the requested information, the Firm asks to review the Court's file so that the Firm can make an independent evaluation as to whether the Court had jurisdiction to enter the Orders and to verify the existence, legality, scope, and extent of the Appointment Orders. Once the Firm has verified that the Amended Production Order is lawful, the Firm will comply with that Order.

The Firm waives the lack of service of a subpoena or summons on it, but the Firm expressly reserves all objections to having been denied timely notice and a fair hearing related to the Production Orders.

All of which is respectfully submitted.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

August 30, 2012.

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, the undersigned employee, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on August 30, 2012at the following addresses:

Document Served:

Motion to Reconsider and Claim of Privilege Pending Review of the Court's File

Counsel Served:

Annie B. Hightower, Esquire
Aiken & Hightower
1634 Main Street, Suite 200
Columbia, SC 29201

Rita Bragg Cullum
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

The Honorable Jacqueline D. Belton
Associate Probate Judge
51701 Main Street
2nd Floor Suite 207
Columbia, SC 29201

Bonnie Faye Kirkland, Litigation Assistant

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE PROBATE COURT Case Nos. 2011-GC-40-00047 2011-GC-40-00048

EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

FILED
12 SEP 17 PM 4:23
AMY M. LANDERS-MAY
PROBATE JUDGE
RICHLAND COUNTY, S.C.

TO THE COURT AND TO COUNSEL OF RECORD:

Robert J. Thomas and the law firm of Rogers Townsend & Thomas, PC (the "Firm") respectfully ask the Court to reconsider its Order of July 31, 2012, its Amended Order of August 24, 2012 (collectively the "Production Orders"), and its oral order declining to allow the Firm to review the entire Probate Court file in these cases.

Procedural Background

On July 31, 2012, this Court entered an order requiring South Carolina attorney Robert J. Thomas and the Firm to produce wills, powers of attorney, and similar documents, including drafts of them, belonging to Mary Beth Sjoberg to the Court. On August 24, the Court amended the order somewhat. Thereafter, Amy Landers May (an attorney in the Firm) asked the Court to allow her to review the court's entire file. The Court declined (citing its standard policy) but produced specific documents it felt relevant to the situation.

Mr. Thomas and the Firm thereafter filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Court's file. The Firm

stated that before it would exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to produce the requested documents, it would make an independent evaluation as to whether the Court was authorized to enter the Orders, and it would make an independent evaluation as to the existence, legality, scope, and extent of the orders appointing Paula Sjoberg Saine as Temporary Guardian and Conservator and appointing Bea Hightower as Guardian ad Litem.[1] The Firm has completed its evaluation and respectfully reports that it is not convinced the Court was authorized to enter the Production Orders, and the Firm is not convinced that the Production Orders allow it to reveal information otherwise protected by the attorney-client privilege or the work product doctrine.

The Court set a deadline of Friday, September 14, to file this brief but extended the deadline until today. Thereafter the Court sent an email to Mr. Thomas and the Firm reading in part:

> [I]f the basis for not turning over the original Will to the Court is the jurisdictional issues [raised by the Firm], then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.
>
> Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-

[1] Such an inquiry is required by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law").

mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.[2]

The Court has not opened its file to the Firm and has not produced any of the specific documents requested by the Firm. Of particular significance to the Firm are the affidavit of service of the summonses and petitions on Mrs. Sjoberg; the affidavit of service of the notice of the May 9, 2011, hearing; and evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally. But the Firm also requested (and has not received) copies of the summonses and petitions in these cases; any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf; the notice of the hearing held on May 9; any pleadings, motions, reports, or briefs filed by Attorney Mike Polk; the report (if any) by a visitor who might have gone to Ms. Sjoberg's residence as required by law; any order indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced; the order directing Attorney Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney; and the reports of Dr. Nelson and Dr. Brannon.

Analysis

We will start with the Court's email of 5:58 PM on Friday, September 14, 2012.

In that email the Court did not state how Mr. Johnson's failure to raise certain issues mattered since the Court had previously found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed

[2] Out of an abundance of caution, we are treating this email as a court order because we assume the Court meant what it said.

and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

As to Attorney Polk's involvement, the Firm has not been provided a copy of the Court's file so it can see whether Mr. Polk even considered the jurisdictional and due process issues we are raising here. Furthermore, the Order appointing Mr. Polk did not give him authority to waive any of Ms. Sjoberg's rights, including the right to challenge jurisdiction, to waive due process, or to waive the attorney-client privilege or the benefits of the work product doctrine.

Now we will move to the merits of the motion.[3]

Robert J. Thomas has known Mary Beth Moore Sjoberg since 1952. Mr. Thomas has served as her attorney since the death of her husband several years ago (with one exception, when the firm of Ellis Lawhorne & Sims represented her by reviewing her estate planning documents and drafted a healthcare power of attorney for her[4]). Mr. Thomas has drafted numerous estate planning documents for her. More recently, Mr. Thomas helped Ms. Sjoberg create her present estate plan and helped her with her many conflicts with Paula Sjoberg Saine (her daughter). In the course of that representation, Mr. Thomas learned information about Ms. Sjoberg of a highly confidential manner. Due to the attorney-client privilege and work product doctrine, Mr. Thomas believes that Ms. Sjoberg fully expected this information to remain confidential and private, and Mr. Thomas expected to keep it that way.

---

[3] Most of the following facts are found in the so-far unsigned Affidavit of Robert J. Thomas (attested to be accurate by the Affidavit of Robert P. Wood due to Mr. Thomas's inability to execute an affidavit today).

[4] Whether that creates a conflict of interest is beyond the scope of this brief.

Paula has long known that Mr. Thomas represented Ms. Sjoberg regarding Ms. Sjoberg's estate planning issues and regarding the many disputes between Paula and Ms. Sjoberg. And Paula knew that when, in early May, 2011, she filed summonses and petitions seeking her appointment as guardian and conservator for Ms. Sjoberg.

Pursuant to SCRCP Rule 4(d)(2), the summonses and petitions had to be served on Ms. Sjoberg personally. The Court has declined to allow us to see any proof of service of the summons on Ms. Sjoberg personally as required. We do not believe they were served on Ms. Sjoberg personally and have not seen any evidence that they were. Until we see proof that the summonses and petitions were served on Ms. Sjoberg personally, we cannot presume that the Court has, or ever has had, personal jurisdiction over Ms. Sjoberg. Hence, any order requiring Mr. Thomas or the Firm to do anything is void.

Ms. Sjoberg was also entitled to be served personally with notice of the hearing whereby Paula sought to have herself appointed Guardian and Conservator for Ms. Sjoberg, and Ms. Sjoberg was entitled to be present at the hearing in person. See S.C. Code §§ 62-5-303 (a) and (b) (appointment of a Guardian) and 62-5-407 (a) and (b) (Conservator). See also S.C. Code § 62-1-401 requiring notices be given to interested parties (of which Mr. Thomas was one). Nothing in the file shows that Ms. Sjoberg was personally served with notice of the hearing or given notice of a chance to attend it in person. When the Court appointed a guardian and conservator (and froze Ms. Sjoberg's bank accounts) without having had personal jurisdiction over Ms. Sjoberg and without having afforded her notice and an opportunity to be heard, the Court denied Ms. Sjoberg due process of the law, and the ensuing orders were simply not authorized.

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...
>
> Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

With all due respect to the Court, the Firm has decided it will not honor any order where the Court that issued it does not have jurisdiction and has denied the Firm's client due process.

Also, when this suit was commenced, Ms. Sjoberg was entitled to counsel of her choice. Mr. Thomas was Ms. Sjoberg's choice. S.C. Code §§ 62-5-303(b) and 62-5-407(b) provide that: "unless the person to be protected has counsel of his own choice, [the court] shall appoint an attorney." Section 407(b) goes further, stating that if the person "already has representation by an attorney that attorney shall act as his guardian ad litem."

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court reversed an order disqualifying a party's attorney and held that the order was immediately

appealable because an individual has the "right to be represented by an attorney of ones choosing," which is a substantial right.

Paula did not help the situation. She and her counsel knew that Mr. Thomas represented Ms. Sjoberg. Yet Paula failed to so notify the Court and proceeded as if she did not know of Mr. Thomas's existence.

Privileges

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). The attorney-client privilege is strong enough to survive death. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. "The acts of a court without jurisdiction" however "are without effect." DeWitt v. S. Carolina Dept. of Highways & Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980). Furthermore, as noted above, an attorney ordered to reveal information protected by the attorney-client privileged is required to assert on behalf of the client all nonfrivolous claims that a court order is not authorized. Cmt. 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

Review of Court's File

Finally, we respectfully request that the Court reconsider its order denying the Firm an opportunity to review its entire file.[5] "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and [Art. I § 9 of] the state constitution." Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). Mr. Thomas and the Firm have no right or duty to reveal privileged documents and information absent an authorized court order, and they are entitled to question the authority of this Court to enter such an order. Nothing could be more sensitive and confidential than a living person's will and estate planning documents. Mr. Thomas and the Firm owe all of their current and former clients the duty to protect their confidential information from parties occupying potentially adverse positions.

Conclusion

Robert J. Thomas and Rogers Townsend & Thomas, PC respectfully ask the Court to reconsider its orders requiring them to produce Ms. Sjoberg's estate planning documents and other confidential information, and they ask the Court to reconsider their request to see the Court's file related to these proceedings.

[5] The Court's 6 PM email reads in part, "We can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised.... Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon." The Court did not extend the Firm's deadline for filing this brief.

All of which is respectfully submitted.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17, 2012.

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
	Case Nos. 2011-GC-40-00047
COUNTY OF RICHLAND	2011-GC-40-00048
EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC	
IN THE MATTER OF MARY BETH SJOBERG	**AFFIDAVIT OF AMY LANDERS MAY**
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.	

I make this Affidavit for the use of the Court and declare the following to be true:

1. I am an attorney with the law firm of Rogers Townsend & Thomas, PC
2. On Thursday, August 23, 2011, I called the Richland County Probate Court Guardianship and Conservatorship Division wherein I asked Ms. Lewis, the division clerk, if I could come up to the Court to review the Sjoberg file in that I was trying assist the Firm in responding to Judge Belton's Order for documents in that case and that specifically I was interested in the service documents. Ms. Lewis instructed me it was fine to come up to the Court. When I arrived

some thirty (30) minutes later, Ms. Lewis was making copies for me of certain pages in the file and told me that Judge Belton would not allow me to review the entire file.

3. I asked to speak with Judge Belton; however, she was on the bench. I asked Ms. Lewis if there were any affidavits of service in the file and to please be sure that she there was nothing else in the file that she might be able to provide per Judge Belton's instructions. I then thanked Ms. Lewis, accepted the documents that she was able to provide me and left the Court.

FURTHER AFFIANT SAYETH NOT.

Amy Landers May

Sworn to before this 7 day of September, 2012.

Notary Public for the State of South Carolina
My Commission Expires: 3-30-2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case Nos. 2011-GC-40-00047
2011-GC-40-00048

EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

AFFIDAVIT OF ROBERT P. WOOD

PERSONALLY APPEARED BEFORE ME ROBERT P. WOOD, who, after being duly sworn, deposes and says that:

1. My name is Robert P. Wood. I serve as Counsel for the Firm of Rogers Townsend & Thomas, PC. I also serve as counsel for Robert J. Thomas in these actions.

2. The facts forming much of the basis for the Firm's opposition to the orders requiring Mr. Thomas and the Firm to turn over Ms. Sjoberg's will and other estate planning documents are found in the attached unsigned affidavit of Robert J. Thomas. Mr. Thomas is out of town today and does not have access to a computer or a printer. So he is unable to sign the affidavit today.

3. Knowing he was not going to be available to sign an affidavit today, I prepared an affidavit for him based on my understanding of the facts that he knew. I then read the proposed affidavit to him over the telephone, and he affirmed to me that it was accurate.

4. Mr. Thomas will return to Columbia on Tuesday, September 18, 2012, and I fully expect to file his Affidavit that afternoon.

5. I am informed and believe that the unsigned affidavit accurately reflects Mr. Thomas's understanding of the facts of this case.

Robert P. Wood (SC Bar No. 6206)

Sworn to before me this 14th day
of September, 2012

Notary Public for South Carolina
My Commission Expires: 3-30-2017

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT J. THOMAS
COUNTY OF RICHLAND)

I make this affidavit for the use of the Court and declare under oath that the following facts are true.

1. I met Mary Beth Moore in the fall of 1952, when I was a freshman in law school. I have known her ever since. Back when I was in law school I became very good friends with her and the women she shared an apartment with.

2. Years later, Mary Beth met and married Stig Sjoberg (pronounced Steeg See Burg), from Sweden. They and we (my wife, Barbara, and I) remained friends and frequently got together socially.

3. For most of the 60 years of our friendship I have been Mary Beth's lawyer, and my law partner, Eugene F. Rogers, served as Stig's lawyer until Stig's death. I have also provided legal advice to Paula Sjoberg Saine (Mary Beth's daughter) in a confidential personal matter not related to Mary Beth.

4. Before Paula filed this lawsuit, Paula knew that I represented Mary Beth in her estate planning and in her business affairs.

5. One morning I visited Paula at Mary Beth's home at Paula's request because Paula was interested in Mary Beth's estate plan.

6. Mary Beth is physically weak and very delicate, but her mind was fairly clear in all of 2011. She paid her bills herself and was proud that she always paid them on time. She also enjoyed playing bridge. I point these out to say that when these petitions were filed in May 2011, Mary Beth's mental capacity seemed fine to me and certainly sufficient to make an informed decision about whom her lawyer should be, and certainly sufficient to make a will.

7. Later, when Mary Beth was in HealthSouth recovering from an elbow replacement, Paula took her car keys and her automobile. Paula did this without discussing it with Mary Beth or me. Paula also took Mary Beth's checkbook. This greatly upset Mary Beth.

8. Mary Beth frequently told me she was angry with Paula. At Mary Beth's request, I sent emails to Paula, telling her that Mary Beth was angry about Paula's taking the car and the checkbook, and I asked for their return. I suggested that she (Paula) and I meet to discuss the issue. I offered to take her to lunch or to come by her home one morning (as I had done before). I sent Paula emails on March 28, March 29, April 4, and April 6, 2011. I never received a response. In the last email, I stressed the importance of the meeting and stated that Mary Beth is so angry she is contemplating some decisions that could adversely affect Paula and her family.

9. Instead of receiving a response, in late April 2011, I received and exchanged voice mail messages with Rita Bragg Cullum on Paula's behalf. When Rita and I eventually talked, Rita questioned Mary Beth's capacity to make a will. I say this to emphasize that Rita (Paula's attorney) knew that I represented Mary Beth in her estate planning activities.

10. Rita then told me that she had drafted some documents and wanted to have copies delivered to me. I inferred that she was suggesting something to be done cooperatively, so I offered to stop by her office to pick them up. She then said she had not completed drafting them but would send them to me when completed. I suggested instead that she could scan them and email them to me. She said she would do one or the other. But I never heard from Rita again. I say this to emphasize that Rita knew that I represented Mary Beth in the very matter she would soon raise in her guardian and conservatorship petitions.

11. I learned on Saturday, May 14, that contrary to what she told me, Rita had proceeded *ex parte* on May 10, and obtained what I learned were two orders issued without

notice to me or Mary Beth, one appointing Paula temporary conservator and the other appointing Paula temporary guardian.

12. I am informed and believe that Mary Beth was not properly served with process in these cases, that Mary Beth was effectively denied counsel of her choice to challenge the allegation of incapacity, and that Mary Beth was effectively denied the opportunity to attend the hearing in which her capacity would be determined. I am therefore informed and believe that when Mary Beth's accounts were frozen and she was denied access to her funds, she was deprived of her property without due process of law.

13. I am further informed and believe that the orders commanding my law firm and me to produce documents were entered by a court that did not have personal jurisdiction over Mary Beth, and I therefore believe that if I were to reveal Mary Beth's will and other estate planning documents or any of my file to Bea Hightower, I would be violating the attorney-client privilege and would be subject to discipline by the South Carolina Supreme Court. I am not willing to do that. Mary Beth's will is confidential, Mary Beth fully expected me to keep it confidential.

14. I am also concerned that even a lawful court order would not allow me to turn my file or Mary Beth's estate planning documents over to anyone. Specifically, Rule 1.14(c) of the South Carolina Rules of Professional Conduct only allows me to reveal information about a client with diminished capacity (which I do not know that Mary Beth has) to the extent reasonably necessary to protect Mary Beth's interests. There is no exception in Rule 1.14 for complying with a court order such as there is in Rule 1.6. I cannot understand how producing documents to a lawyer (Bea Hightower) nominated by Rita to serve as Mary Beth's guardian ad litem could possibly serve to protect Mary Beth's interests since Rita's client is directly adverse

to Mary Beth. Finally, I do not know at all that Mary Beth lacks testamentary capacity. If Mary Beth has testamentary capacity, then the contents of her current will and estate planning documents could not possibly be relevant to the court or a potential heir.

Robert J. Thomas

Sworn to before me this 18th day of September, 2012.

Notary Public for South Carolina
My commission expires 3-20-2019

6136635

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
) CIVIL ACTION COVERSHEET
Robert J. Thomas and Rogers Townsend & Thomas, PC,)
Plaintiff(s))
) 2012CP4006251
vs.)
Richland County Probate Court;)
)
Defendant(s))

Submitted By:
Robert P. Wood (SC Bar #6206)
ATTORNEYS FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
(803) 343-7017 – Fax
info@rtt-law.com

2012 SEP 17 PM 4:18

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts – Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-CP-_____-
- ☐ Notice/File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture—Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex/Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 9/17/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Robert J. Thomas and Rogers Townsend & Thomas, PC, Plaintiff(s)) CERTIFICATE OF EXEMPTION FROM ADR

vs.

Richland County Probate Court;) DOCKET NO. _____

Defendant(s))

I certify that this action is exempt from ADR because:

☒ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;

☐ this action is appellate in nature;

☐ this is a post-conviction relief matter;

☐ this is a contempt of court proceeding;

☐ this is forfeiture proceeding brought by the State;

☐ this is a case involving a mortgage foreclosure; or

☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

2012 SEP 17 PM 4:48

JEANNETTE W. [illegible]
C.C.P. & G.S.

RICHLAND COUNTY

_____ _____
Plaintiff/Attorney(s) for Plaintiff(s) Defendant/Attorney(s) for Defendant(s)
Robert P. Wood (SC Bar # 6206)
ATTORNEY FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900

Date: 9/17/12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2012 SEP 17 PM 4:48

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Repsondent.

SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Petition, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto upon the undersigned attorney at his office located at 220 Executive Center Drive, Post Office Box 100200 (29202), Columbia, South Carolina, 29210 within thirty (30) days after the service hereof, exclusive of the day of such service.

If you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for the relief demanded therein and judgment by default will be entered against you.

Robert P. Wood (SC Bar No. 6206)
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC, Petitioners, vs. RICHLAND COUNTY PROBATE COURT, Respondent.	Petition for Writ of Mandamus or Writ of Certiorari (Non-Jury)

2012 SEP 17 PM 4:48

Your Petitioners would respectfully allege:

1. This Petition seeks a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg; Paula S. Saine, as the Attorney-In-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048.

2. Petitioner Robert J. Thomas is an attorney-at-law, licensed to practice law in South Carolina, with his office in Lexington County, South Carolina. He has been the attorney for Mary Beth Sjoberg for several years.

3. Petitioner Rogers Townsend & Thomas, PC is a South Carolina law firm with its principal place of business in Lexington County, South Carolina.

4. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Respondent, the Richland County Probate Court, entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate planning documents, and drafts thereof. Copies of those orders

are attached. The Court also declined to allow the Petitioners to review these files so they could ascertain the Probate's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. The Petitioners filed a motion to reconsider those orders.

5. By follow-up emails, the Court ordered Mr. Thomas and the Firm to submit a memorandum of law by September 14, 2012. A copy of that email is attached. The Court extended the deadline to today (September 17) by the attached email, but later that day ordered the production of Ms. Sjoberg's Will by 5 PM today, although it had not allowed the Petitioners to review the files.

6. The Richland County Probate Court is a court of public record and should have allowed Mr. Thomas and the Firm to review its files before the deadline for submitting a memorandum of law or producing the Will.

7. The Court had a duty to make its files available to Mr. Thomas and the Firm pursuant to Art. I § 9 of the South Carolina Constitution, the First Amendment to the United States Constitution, and the case of (and authorities cited in) Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006).

8. Producing copies of the court's records is a ministerial act.

9. The Petitioners need to see these files to ascertain the authority of the Probate Court to require the production of documents protected by the attorney-client privilege and the work produce doctrine. See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct. The Petitioners are also entitled to see these files because they are counsel for Ms. Sjoberg. Finally, the Petitioners are members of the public and are therefore entitled to see these files.

10. The Petitioners do not have any other legal remedy than a writ compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents.

11. The Petitioners have no desire to be held in contempt of court and have every intention of obeying a lawful court order. But they cannot obey an order when the court that issued it forces them to produce the Will without allowing the Petitioners an opportunity to determine the authority of the court to enter to the order.

WHEREFORE, having set forth their Petition, the Petitioners ask the Court to enter a writ of mandamus (or in the alternative a writ of certiorari) compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents. Meanwhile, the Petitioners ask the Court to stay the order of the Probate Court commanding the production of the Will and related documents.

Robert P. Wood
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Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

VERIFICATION

PERSONALLY appeared before me Robert P. Wood, who, being duly sworn, deposes and states that he is the attorney for Robert J. Thomas and the Law Firm of Rogers Townsend & Thomas; that he has read the within Petition, and that the facts stated therein are true of his own knowledge, except those matters and things alleged therein on information and belief, and as to those, he believes them to be true.

Robert P. Wood

SWORN to before me this
17 day of September, 2012

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8-30-2019

2012 SEP 17 PM 4:48

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 06, 2012 9:42 AM
To:	Robert P. Wood; Amy Landers May
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject:	Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048
Attachments:	KMBT20020120905170144.pdf

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr.
Wood's motion will be treated as a motion filed under SCRCP Rule 59(e).
Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please
confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May

Cc: Robert Thomas; rcullum@ellisl... .orne.com; bea@alkenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

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Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 3:08 PM
To: Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; 'JACQUELINE BELTON'
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz

Subject: Mary Beth Moore Sjoberg, . .1-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr.
Wood's motion will be treated as a motion filed under SCRCP Rule 59(e).
Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

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Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:11 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

I would also like to see the notice of the hearing held on May 9 and proof of service of that notice.

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Thursday, September 13, 2012 4:58 PM
To: Robert P. Wood; Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
I just got out of a long hearing. There will be no problem with you receiving the documents you requested. The quickest way to get them to you would be to scan and e-mail them, if that works for you. However, as that can't be done until tomorrow I can give you until next Monday to get your response to me, if needed.

Please let us know if that works for you.

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
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Sent: Thursday, September 13, 2012 3:08 PM
To: Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; JACQUELINE BELTON
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Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

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Sent: Monday, September 10, 2012 1:46 PM
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Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Sent: Thursday, September 06, 2012 9:42 AM
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Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 6:36 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Cc: JACQUELINE BELTON (BELTONJ@rcgov.us)
Subject: Sjoberg

Could you also scan and email to me:

The report by the visitor who went to Ms. Sjoberg's residence.

I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send me that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Friday, September 14, 2012 5:58 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS; mike@belserpa.com
Subject: RE: Sjoberg

Dear Mr. Wood:
Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

Thanks and have a good weekend.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
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E-Mail: beltonj@rcgov.us

From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Friday, September 14, 2012 5:26 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS
Subject: Sjoberg

Judge Belton: I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday.

If you are pressed for time, the main ..ngs I'd like to see as soon as possible are

the affidavit of service of the summonses and petitions on Mrs. Sjoberg;
the affidavit of service of the notice of the 5/9/11 hearing; and
evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally.

All these go, of course, to whether the court had personal jurisdiction over Ms. Sjoberg and whether she was afforded timely notice and an opportunity to be heard before entry of the appointment orders that resulted in the order requiring our firm to turn over material that we feel is covered by the attorney-client privilege and the work product doctrine.

But I would still like to see the other documents when you can get to them. I have, by the way, now seen Dr. Nelson's report.

Thanks.

Bob Wood

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Shareholder

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	)	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 ORDER FOR RELEASE OF CLIENT DOCUMENTS

2012 JUL 31 PM 12:41
[illegible]
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER COMES BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

A conference regarding the status of the permanent Guardianship and Conservatorship appointments of Ms. Saine was held July 13, 2012, in chambers. Present at the status conference were Rita Bragg Cullum and A. Bea Hightower. At the status conference the Court discussed the payment of attorneys' fees and Guardian *ad Litem* fees, the estate planning documents of Ms. Sjoberg, and the status of the Guardianship and Conservatorship of Ms. Sjoberg going forward.

Ms. Saine is the Attorney-in-Fact for Ms. Sjoberg under a Healthcare Power of Attorney dated October 14, 2010, and a Durable Power of Attorney, although never recorded, executed by

Ms. Sjoberg. Ms. Saine was appointed as the Temporary Guardian and Temporary Conservator for Ms. Sjoberg by Order of this Court dated May 12, 2011. That this Court expects that Ms. Saine's temporary appointments will become permanent appointments.

That this Court is informed and believes that certain estate planning documents executed by Ms. Sjoberg are currently in possession of the law firm of Rogers, Townsend & Thomas, PC. That the attorney and Guardian *ad Litem* for Ms. Sjoberg informed the Court that she has contacted Robert J. Thomas, former long-time attorney for Ms. Sjoberg, and attorney Amy Landers May, both of Rogers, Townsend & Thomas, PC of this request. The attorney for Ms. Saine and the attorney and Guardian *ad Litem* of Ms. Sjoberg have requested that these certain estate planning documents and any and all documents pertaining to a rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, be turned over to Ms. Saine as the Temporary Guardian and Conservator for Ms. Sjoberg and that this Court authorize Rogers, Townsend & Thomas, PC to produce these certain documents. After considering the request of the attorney for Ms. Saine and the attorney and Guardian *ad Litem* for Ms. Sjoberg, the Court finds that the request is appropriate and that in order for the Temporary Guardian and Conservator to fulfill her fiduciary duties to her ward, it is in the best interests of Ms. Sjoberg for her Attorney-in-Fact and Temporary Guardian and Conservator to be in possession of her estate planning documents and the rental property agreement.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will

and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as the Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 31, 2012
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

STATE OF SOUTH CAROLINA)	**IN THE PROBATE COURT**
)	**Case Numbers: 2011-GC-40-00047**
COUNTY OF RICHLAND)	**2011-GC-40-00048**
IN THE MATTER OF)	
MARY BETH SJOBERG)	
)	
PAULA S. SAINE, AS THE)	**AMENDED**
ATTORNEY-IN-FACT FOR)	**ORDER FOR RELEASE OF CLIENT**
MARY BETH SJOBERG, PRINCIPAL,)	**DOCUMENTS**
AND AS THE DAUGHTER OF MARY)	
BETH SJOBERG,)	
)	
TEMPORARY GUARDIAN and)	
CONSERVATOR.)	

FILED
2012 AUG 24 PM 3:35
AMY McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER CAME BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

An Order was issued by this Court on July 31, 2012 in which the law firm of Rogers, Townsend & Thomas, PC (hereinafter "RTT") was authorized to produce and release and was directed to immediately produce and release any and all estate planning documents, not just final or most recent versions, of estate planning documents executed by Mary Beth Sjoberg. The documents included, but were not limited to, Last Will and Testaments; trusts, revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy,

including copies in digital format or electronically stored. Reference is made to the July 31st Order for the background concerning this matter. The Order further required that whoever had actual possession of the requested documents, whether they were in the possession of RTT and/or attorney Robert J. Thomas, turn the documents over to Paula S. Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg

That this Court is informed and believes that some of the requested estate planning documents may have been turned over to Ms. Hightower, as attorney and Guardian *ad Litem* for Ms. Sjoberg, and/or to Paula Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg. However, the Court was copied on a letter sent by Mr. Thomas to Ms. Hightower which stated that some documents would be turned over, but expressed concerns about the general nature of the request and concerns about violating attorney-client privilege by turning over other materials from his files. Given that concern, this Court is amending its prior order to clarify what materials are being requested from the files of attorney Robert J. Thomas and/or RTT. Though some documents may have already been turned over by Mr. Thomas, for the sake of clarity this Amended Order will restate all of the documents that are stated in the previous order and will further clarify to whom remaining documents are to be given.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all actual estate planning documents, not just final or most recent versions of those estate planning documents executed by Mary Beth Sjoberg, including, but not limited to: Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and

business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

August 24, 2012
Columbia, South Carolina
Nunc Pro Tunc to July 31, 2012

FILED
12 OCT 26 PM 4:58
AMY LANDERS MAY
PROBATE COURT
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case Nos. 2011-GC-40-00047
2011-GC-40-00048

EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

SECOND MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

TO THE COURT AND TO COUNSEL OF RECORD:

On October 18, 2012, the Court furnished Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively the "Firm") with a complete copy of its file (less documents not requested by the Firm) and certified the completeness of the file. On the afternoon of October 24, 2012, the Court notified the Firm that it had until October 26, 2012, to file a supplemental brief related to the Firm's motion asking the Court to reconsider its Order of July 31, 2012, and its Amended Order of August 24, 2012 (collectively the "Production Orders"). We therefore submit this brief.

Procedural Background

On July 31, 2012, this Court entered an order requiring South Carolina attorney Robert J. Thomas and the Firm to produce wills, powers of attorney, and similar documents, including drafts of them, belonging to Mary Beth Sjoberg to the Court. On August 24, the Court amended the order somewhat. Thereafter, Amy Landers May (an attorney in the Firm) asked the Court to

allow her to review the court's file. Aff. of Amy May, ¶ 2. The Court declined (citing its standard policy) but produced specific documents it felt relevant to the situation.

Mr. Thomas and the Firm thereafter filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Court's file. The Firm stated that before it would exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to produce the requested documents, it would make an independent evaluation as to whether the Court was authorized to enter the Orders, and it would make an independent evaluation as to the existence, legality, scope, and extent of the orders appointing Paula Sjoberg Saine as Temporary Guardian and Conservator and appointing Bea Hightower as Guardian ad Litem.[1] The Firm has completed its evaluation and respectfully reports that it is still not convinced the Court was authorized to enter the Production Orders, and the Firm is not convinced that the Production Orders allow it to reveal information otherwise protected by the attorney-client privilege or the work product doctrine.

Argument

1. The Court Does not have Personal Jurisdiction over Ms. Sjoberg

a. Ms. Sjoberg was never served with the summonses and petitions.

A review of the file shows that Ms. Sjoberg was never personally served with the summons and petitions in these cases. The alleged incompetent person must be personally served. SC Code § 62-5-405 provides:

[1] Such an inquiry is required by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law").

(a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition.

Service is jurisdictional:

After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and....

No statute or rule we have found allows substitute service or service on an attorney-in-fact. See also Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which provides in relevant part:

(d) Summons: Personal Service. ... Service [of a summons and complaint] shall be made as follows:

(d)(2) Minors, Incompetents and Persons Confined. Upon ... an incompetent person by delivering a copy of the summons and complaint to such ... incompetent personally. ...

b. Paula Saine's supposed consent to the relief sought in the summonses and petitions is invalid.

If Ms. Saine claims she held a power of attorney authorizing her to accept service, we have not seen it. The copy of the power of attorney we have seen does not give Ms. Saine the power to accept service of a lawsuit or to defend one. Exhibit A. And, at any rate, the copy of the power of attorney we have seen was revoked long before Ms. Saine purported to use it to accept service. Id.

c. Ms. Sjoberg was never given notice of the hearing that resulted in the appointment of a conservator.

First, nothing in the Court's file shows that Ms. Sjoberg was ever sent notice of a hearing for appointment of a conservator as required by S.C. Code § 62-5-401 (providing that upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator).

Secondly, we point out that SC Code § 62-5-405 requires notice of a petition for appointment of a conservator to be given to "interested persons." Mr. Thomas was certainly an interested person, and counsel for Ms. Saine knew it. See Aff. of Robert J. Thomas, ¶¶ 9 – 11.

Finally, we point out that SC Code § 62-5-407 provides:

> (b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem.

Counsel for Ms. Saine knew that Mr. Thomas was representing Ms. Sjoberg yet allowed the petition to move forward without his knowledge until he finally learned on Saturday, May 14, 2012, about the proceedings (which had been going on since April 22, 2011). Thomas Aff. ¶ 11.

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court reversed an order disqualifying a party's attorney and held that the order the "right to be represented by an attorney of ones choosing" is a substantial right.

c. Ms. Sjoberg has not waived service or notice of the hearing.

The Court expressed in an email its belief that Attorney Pope Johnson waived service of the summons and petition and waived notice of the hearing by serving an answer that did not reserve those defenses and by not raising them at the hearing he attended. However, the Court also found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

We seem to recall the Court expressing concerns over the fact that it appointed Attorney Michael Polk to review the file. The order appointing Mr. Polk, however, did not order or even authorize him to check into issues of jurisdiction (personal or subject-matter), and when we interviewed him he said he did not check into those matters. Our review of the court's file does not reveal any document submitted by Mr. Polk where he says he checked into jurisdictional matters.

Finally in this regard, we note that waiver of notice of the hearing by the person to be protected is not effective unless she attends the hearing (which nothing in the Court's file

shows she did) or unless her attorney gives notice of the waiver (which nobody did). SC Code § 62-5-405(b).

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Finally, as a matter of common sense, we urge the Court to think about what happened here. At 3:55 PM on Friday, April 22, 2011, while Ms. Sjoberg was out of town, Paula Saine's lawyer carried papers to the Richland County Probate Court for filing. Those papers contained a petition that the Court appoint a conservator for an allegedly incompetent person, and they contained a consent to that relief signed by the very person who was petitioning for that relief. As a result, without any sort of notice, Ms. Sjoberg found that her assets had been frozen and taken from her. We submit that neither the South Carolina General Assembly nor society in general will tolerate this sort of conduct. There are reasons why a summons and petition and a hearing notice need to be served on an allegedly incompetent person personally.

2. The Court Does not have Subject-matter Jurisdiction to Order the Turnover of a Will

Despite a good bit of effort, we have not been able to find any statute or case that gives a probate court (a court of limited jurisdiction) the subject-matter jurisdiction to order the

production of a living person's will except possibly the narrow grant of authority to probate courts under SC Code § 62-5-408. In that statute, the South Carolina General Assembly has seen to it that, with the help of a court with jurisdiction, the court can examine a living person's will if the one asking the court to see it jumps through specific hoops in the right order at the right time.

Here, though, a review of the Court's file shows that Ms. Saine has not followed the statutory scheme to obtain a court order that would force or authorize the Firm to turn over Ms. Sjoberg's estate planning documents.

Section 62-5-408 is long and not easy to follow, so we urge the Court to get out its own copy of the statute and study it carefully.

We start with an overview of the statute:

Section (1) provides that while a petition for appointment of a conservator is pending and after a preliminary hearing of which the protected person had notice, the court may do things with the protected person's property if the petition asks the court for temporary relief. If the court takes the actions requested of it, then it must give notice of its actions to "interested parties" as soon as practicable thereafter.

Section (3)(a) then provides that after a hearing and determination that a conservator needs to be appointed for the protected person, the court, for the benefit of the protected person and the estate, has all the powers over the protected person's estate that she could exercise if she were not under a disability (such as incompetence), except to make a will.

Section (3) then lays out all the various powers the court can exercise so long as, pursuant to Section (3)(b), in the petition seeking that specific relief, the incapacitated person

and her known heirs and her devisees, and her donees, and her beneficiaries are made parties to the action and so long as the petition alleges that the incapacitated person is incapable of consenting to this relief.

Only then, pursuant to Section (3)(c), may the Court consider the protected person's estate plan.

We will address this section by section.

Section (1) envisions a petition separate from the petition for appointment of a conservator ("While a petition for appointment of a conservator ... is pending."). Even if not, Ms. Sjoberg did not get notice of any such petition and did not get notice of any such hearing (as discussed above).

Next, whatever the Court does with this power is limited to actions that are for the protected person's "benefit or the benefit of her dependents." There has been absolutely no showing that an order requiring the production of estate planning documents will benefit Ms. Sjoberg. And she has no dependents.

As to Section (3)(b), there is no allegation in the petition for appointment of a conservator (assuming that petition can be the vehicle for this sort of relief) that Ms. Saine is asking for the specific relief of reviewing or amending Ms. Sjoberg's estate plan (which would be the only reason for it to be revealed). And, again, we do not see how amending Ms. Sjoberg's estate plan would benefit Ms. Sjoberg, and we imagine that is why Ms. Saine did not ask for that specific relief. So we would imagine that even if Ms. Saine were to file such a petition seeking the specific relief of reviewing or amending her mother's estate plan, the petition would be denied.

3. Privileges

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). The attorney-client privilege is strong enough to survive death. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. "The acts of a court without jurisdiction" however "are without effect." DeWitt v. S. Carolina Dept. of Highways & Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980). Furthermore, as noted above, an attorney ordered to reveal information protected by the attorney-client privileged is required to assert on behalf of the client all nonfrivolous claims that a court order is not authorized. Cmt. 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

Conclusion

Robert J. Thomas and Rogers Townsend & Thomas, PC respectfully ask the Court to reconsider its orders requiring them to produce Ms. Sjoberg's estate planning documents and other confidential information. Specifically, they ask the Court to recognize that it does not have personal jurisdiction over Ms. Sjoberg and it does not have subject-matter jurisdiction to over the Firm to turn over Ms. Sjoberg's estate planning documents.

All of which is respectfully submitted.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

October 26, 2012.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

REVOCATION OF *DURABLE* POWER OF ATTORNEY DATED JUNE 23, 2007

KNOW ALL MEN BY THESE PRESENTS that I, Mary Beth Sjoberg, do hereby revoke, cancel and repudiate the *Durable Power of Attorney* wherein I appointed Paula S. Saine as my attorney in fact, which was signed and sworn to on June 23, 2007, in the County of Richland, State of South Carolina, and which may or may not have been filed for record in the Office of the Register of Deeds for Richland County, South Carolina.

WHEREFORE, having revoked my Power of Attorney referred to above, I do hereby request that it be stricken from the records of Richland County, South Carolina, such that it shall be null and void with no validity whatsoever, and I shall be returned to the status that I held prior to my executing such Power of Attorney.

WITNESS my Hand and Seal this 30th day of December, 2009.

Mary Beth Sjoberg
Mary Beth Sjoberg

The foregoing Revocation of *Durable Power of Attorney* dated December 30, 2010, was signed, sealed, published and declared by Mary Beth Sjoberg as and for her revocation of the authority of Paula S. Saine as her attorney in fact, and we, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Carolyn Beasley Brown of Columbia, South Carolina

Robert J. Turner of Columbia, South Carolina

EXHIBIT A

PROBCT 000180

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that she saw Mary Beth Sjoberg sign, seal and as her act and deed, deliver the within written REVOCATION OF *DURABLE POWER OF ATTORNEY* DATED December 30, 2009, that said witness together with the other witness whose name is also above subscribed witnessed the execution thereof.

Carolyn Burden Brown
(witness)

SWORN to before me this 30th day of December, 2010

Notary Public for South Carolina
My Commission Expires: Aug 2, 2010

STATB OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

DURABLE
POWER OF ATTORNEY

KNOW ALL MEN BY THESB PRESENTS, that I, Mary Beth Sjoberg, have constituted and appointed, and by these presents do constitute and appoint Paula S. Saino, as my attorney in fact with power:

a. to sign my name to checks, to endorse checks, to cash checks, to deposit checks, and to do all such things with respect to negotiable instruments other than checks.

b. to satisfy any mortgage which I now own or hereafter acquire.

c. to enter any lockbox in my name anywhere and to add to or remove any contents therefrom.

d. to withdraw and use for my benefit any money which I may have in any bank, savings or investment institutions.

e. to buy, sell, or transfer any stocks, bonds or investment securities in my name.

f. to collect and recover any sums of money or property due me and to prosecute any cause of action which I may have before any of the courts of this or some other state or of the United States.

g. to prosecute in my name, or in her own name on my behalf, any cause of action which I may have against any person or persons, in any court of this state, of any other state, of the United States or of any foreign country and to employ attorneys for such purposes.

This General Power of Attorney shall not be affected by physical disability or mental incompetence by me which might render me incapable of managing my own estate. The authority conferred herein is exercisable notwithstanding any subsequent physical disability or mental

MBS

incompetence on my part.

Should I become mentally disabled, my attorney shall not be required to file any statement or inventory with any court and shall not be required to post a surety bond.

All of which my said attorney is authorized to do as I might or could do if I were personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of June, 2007.

Mary Beth Sjoberg

Mary Beth Sjoberg

ATTESTATION

The foregoing Durable Power of Attorney was this 23rd day of June, 2007, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Barbara H. Thomas

Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

Barbara H. Thomas

Witness 1

Sworn to before me this 23rd day of June, 2007.

Notary Public for South Carolina.
My Commission Expires: 8/2/10

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Bonnie Faye Kirkland, employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on October 26, 2012 at the following addresses:

Document Served:

Second Memorandum in Support of Motion to Reconsider

Counsel Served:

Annie B. Hightower, Esquire
Aiken & Hightower
1634 Main Street, Suite 200
Columbia, SC 29201

Rita Bragg Cullum, Esquire
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

The Honorable Jacqueline D. Belton
Associate Probate Judge
51701 Main Street
2nd Floor Suite 207
Columbia, SC 29201

BF Kirkland

Bonnie Faye Kirkland, Litigation Assistant

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	Case No. 2011-GC-40-00047
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00048
EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC	)	
IN THE MATTER OF: MARY BETH MOORE SJOBERG,	)	
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	)	**NOTICE OF INTENT TO APPEAL**
Petitioner.	)	

FILED
12 DEC -6 PM 3:41

Pursuant to Section 62-1-308 of the South Carolina Code, as amended, Robert J. Thomas and Rogers Townsend & Thomas, PC appeal the following Orders of the Honorable Jacqueline D. Belton: Order for Release of Client Documents, dated July 31, 2012, Amended Order for Release of Client Documents, dated August 24, 2012, and Order Denying Motion to Reconsider, dated December 4, 2012.

Robert P. Wood (SC Bar #6206)
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Counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC

December 6, 2012

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Robert P. Wood, attorney with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 6, 2012 at the following addresses:

Document Served:

NOTICE OF INTENT TO APPEAL

Counsel Served:

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Robert P. Wood (SC Bar #6206)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
2012-CP-40-06251

RICHLAND COUNTY FILED
2012 DEC 11 AM 10:03
JEANNETTE W. McBRIDE C.C.P. & G.S.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Respondent.

Return to Motion to Dismiss

(Respondent has Complied So Case is Moot)

1. The Petition in this case sought a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg; Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048. The Petitioners sought these files to determine whether the Probate Court had the authority to issue an order requiring the Petitioners to turn over various attorney-client privileged documents.[1] If the Court had that authority, the Petitioners would turn them over; if the Court order were not authorized by law, the Petitioners could not turn them over because do to so would violate the Rules of Professional Conduct.

2. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Probate Court entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate

[1] See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

planning documents, and drafts thereof.[2] The Court declined to allow the Petitioners to review these files so they could ascertain the Probate Court's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. Yet the Court persisted in compliance with its order even while it continued to deny the Petitioners access to documents that would enable them to verify that the order was authorized. (In the context of this case, the issue was whether the Probate Court had personal jurisdiction over the Petitioners' client such that it could assume control of her financial affairs.)

3. Not wanting to be held in contempt for refusing to comply with the court order, but not wanting to release attorney-client-privileged documents pursuant to an order issued by a court that might very well not have jurisdiction, the Petitioners filed and served this lawsuit on September 17, 2012, the deadline set for compliance with the Probate Court's order.

4. On October 18, 2012, the Probate Court took three actions:

a. The Probate Court released to the Petitioners all of the portions of its files that the Petitioners felt they needed in order to ascertain whether the orders were authorized;

b. The Probate Court provided the Petitioners with a certification from its counsel that all of the Probate Court's files had been turned over except for certain documents described in detail that the Petitioners did not need to see; and

c. The Probate Court entered an order saying that it had released the files in the exercise of its discretion and not because it had to.

---

[2] The Probate Court entered an order denying the Petitioners' motion to reconsider last week, and the Petitioner has appealed that order to the Circuit Court.

5. In sum, on October 18, the Probate Court provided the Petitioners with the relief they sought in this lawsuit.[3]

8. Because the Probate Court has now provided the file documents and certification of completeness that the Petitioners sought in this lawsuit, the Petitioners believe this lawsuit is now moot, and they so inform the Court.

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December 7, 2012.

[3] Issues involving some language of the order issued when the Probate Court turned over its file to the Petitioners remained unresolved until today.

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2012-CP-40-06251

I, Sheri H. McClendon, a paralegal with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 7, 2012, the following addresses:

RICHLAND COUNTY
FILED
2012 DEC 11 AM 10:03
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Document Served:

Return to Motion to Dismiss

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STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 27th day of February 2014, I served ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Memorandum In Support of Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

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Laura J. Fetner

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC IN THE MATTER OF: MARY BETH MOORE SJOBERG, PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG, Petitioner.	)	IN THE COURT OF COMMON PLEAS Case No. 2012-CP-40-8088 (Probate Case Nos. 2011-GC-40-00047 and 2011-GC-40-00048) **GROUNDS OF APPEAL**

FILED
2013 JAN 17 PM 4:04
RICHLAND COUNTY, S.C.

Pursuant to Section 62-1-308(a) of the South Carolina Code, Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively the "Appellants") file these Grounds of Appeal of the following Orders of the Honorable Jacqueline D. Belton: Order for Release of Client Documents, dated July 31, 2012, Amended Order for Release of Client Documents, dated August 24, 2012, and Order Denying Motion to Reconsider, dated December 4, 2012. The Appellants received written notice on December 5, 2012. The Appellants filed their Notice of Intent to Appeal with both the Richland County Clerk of Court and Richland County Probate Court on December 6, 2012. As required by Section 62-1-308(a) of the South Carolina Code, the original of this Grounds of Appeal are filed with the Richland County Probate Court. A duplicate original is also filed with the Court of Common Pleas, sitting as the appellate court in this matter.

FACTS

On Friday, April 21, 2011, Paula S. Saine sought to be appointed Guardian and Conservator for mother, Mary Beth Moore Sjoberg (hereinafter "Ms. Sjoberg"). Following a hearing, Ms. Saine was appointed Temporary Guardian and Conservator on May 11, 2011. Thereafter, Ms. Saine requested her mother's estate planning documents be turned over to her as Temporary Guardian and Conservator. On July 31, 2012, the Probate Court entered an order requiring the Appellants to produce Ms. Sjoberg's estate planning documents and provide them to Ms. Saine. On August 24, the Probate Court amended the initial order and required the Appellants to turn over Ms. Sjoberg's estate planning documents and submit them to the Probate Court "for examination and safekeeping."

Thereafter, the Appellants filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Probate Court's file. The Appellants argued that the Probate Court lacked the power to enter the orders requiring them to turn over the estate planning documents and argued such production violate the attorney-client privilege, the work product doctrine, and the Rules Of Professional Responsibility.

On December 4, 2012, the Probate Court denied the Appellants' motion to reconsider. In denying the Appellants' motion to reconsider, the Probate Court concluded that it had power to compel the production of Ms. Sjoberg's Estate Planning Documents. First, the Probate Court found that the issue of personal jurisdiction was not before it and could not serve as a basis for Appellants withholding the estate documents. Second, the Probate Court concluded that Section 62-5-408 and 62-5-427 of the South Carolina Probate Court expressed a clear legislative intent that both the conservator and the Court be allowed access to the estate planning documents. Third, the Probate Court concluded that recognizing a claim of attorney-client privilege would

defeat the "intention of the Legislature that the conservator and the Court have access to the documents in order to fulfill their responsibilities to the protected person." Finally, the Probate Court concluded that even if the attorney-client privilege did apply, it had been waived when Mr. Thomas sent a draft of Ms. Sjoberg's will in 2011.

ISSUES

I. Whether the Probate Court erred in concluding that it had the power to issue the underlying Production Orders despite never obtaining jurisdiction in the conservatorship proceeding?

   a. Was Ms. Sjoberg ever served with the summonses and petitions?

   b. Was Paul Saine's supposed consent to the relief sought in her own petition binding on the very person against whom she sought relief?

   c. Did Ms. Sjoberg waive service of the summonses and petitions or of notice of the hearing?

   d. Do S.C. Code Ann. §§ 62-5-408 or 62-5-427 in fact authorize the Production Orders in this case?

   e. Did the Probate Court have the authority to enter the Production orders to determine whether or not the documents were valid?

   f. Did the Probate Court have the authority to enter the Production Orders to ensure the preservation of the documents?

II. Whether the Probate Court erred in concluding that S.C. Code Ann. §§62-5-408 and 62-5-427 authorized its order requiring Appellants produce a living person's estate planning documents?

   a. If the purpose of the Production Orders were to allow it to take into account any known estate plan of Ms. Sjoberg, did the Court first hold a hearing on the "specific relief sought"?

   b. Was a petition for appointment of a conservator pending when the Production Orders were entered, and had a preliminary hearing in which Ms. Sjoberg had notice been held when the Production Orders were entered?

   c. Were the Court's actions for the benefit of Ms. Sjoberg and her estate?

d. By the time the Production Orders were entered, had Ms. Sjoberg actually been made a party to the proceedings, and did the petition allege had she was incapable of consenting to the relief sought?

III. Whether the Probate Court erred in concluding that the attorney-client privilege and work product doctrine did not apply?

STANDARD OF REVIEW

The South Carolina Probate Code provides that a final order of the probate court may be appealed to the circuit court. S.C. Code Ann. § 62-1-308(a). The circuit court must "hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d). This provision sets forth the standard of review for an appeal to the circuit court. Matter of Howard, 315 S.C. 356, 434 S.E.2d 254 (1993). In Howard, the South Carolina Supreme Court held that an appeal from the probate court to the circuit court is reviewed under the same standard that an appellate court would apply. Id.

DISCUSSION

I. The Probate Court never acquired jurisdiction in the conservatorship proceeding; therefore, the Production Orders are invalid.

A. The Probate Court Did Not have Personal Jurisdiction over Ms. Sjoberg

a. Ms. Sjoberg was never served with the summonses and petitions.

A review of the file shows that Ms. Sjoberg was never personally served with the summons and petitions in these cases. The alleged incompetent person must be personally served. SC Code § 62-5-405 provides:

> (a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition.

Service is jurisdictional:

> After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:
>
> > (1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
> >
> > (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and....

(Emphasis added.)

No statute or rule we have found allows substitute service or service on an attorney-in-fact. See also Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which provides in relevant part:

> (d) Summons: Personal Service. ... Service [of a summons and complaint] shall be made as follows:
>
> (d)(2) Minors, Incompetents and Persons Confined. Upon ... an incompetent person by delivering a copy of the summons and complaint to such ... incompetent personally. ...

b. Paula Saine's supposed consent to the relief sought in the summonses and petitions is invalid.

If Ms. Saine claims she held a power of attorney authorizing her to accept service, we have not seen it. The copy of the power of attorney we have seen does not give Ms. Saine the power to accept service of a lawsuit or to defend one. And, at any rate, the copy of the power of attorney we have seen was revoked long before Ms. Saine purported to use it to accept service. Id.

b. Ms. Sjoberg was never given notice of the hearing that resulted in the appointment of a conservator.

First, nothing in the Court's file shows that Ms. Sjoberg was ever sent notice of a hearing for appointment of a conservator as required by S.C. Code § 62-5-401 (providing that upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator).

Secondly, we point out that SC Code § 62-5-405 requires notice of a petition for appointment of a conservator to be given to "interested persons." Mr. Thomas was certainly an interested person, and counsel for Ms. Saine knew it. See Aff. of Robert J. Thomas, ¶¶ 9 – 11.

Finally, we point out that SC Code § 62-5-407 provides:

> (b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem.

Counsel for Ms. Saine knew that Mr. Thomas was representing Ms. Sjoberg yet allowed the petition to move forward without his knowledge until he finally learned on Saturday, May 14, 2012, about the proceedings (which had been going on since April 22, 2011.

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme

Court reversed an order disqualifying a party's attorney and held that the order the "right to be represented by an attorney of ones choosing" is a substantial right.

c. Ms. Sjoberg has not waived service or notice of the hearing.

The Court expressed in an email its belief that Attorney Pope Johnson waived service of the summons and petition and waived notice of the hearing by serving an answer that did not reserve those defenses and by not raising them at the hearing he attended. However, the Court also found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

Finally, waiver of notice of the hearing by the person to be protected is not effective unless she attends the hearing (which nothing in the Probate Court's file shows she did) or unless her attorney gives notice of the waiver (which nobody did). SC Code § 62-5-405(b).

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Finally, as a matter of common sense, we urge this Court to think about what happened here. At 3:55 PM on Friday, April 22, 2011, while Ms. Sjoberg was out of town, Paula Saine's lawyer carried papers to the Richland County Probate Court for filing. Those papers contained a petition that the Court appoint a conservator for an allegedly incompetent person, and they contained consent to that relief signed by the very person who was petitioning for that relief. As a result, without any sort of notice, Ms. Sjoberg found that her assets had been frozen and taken from her. We submit that neither the South Carolina General Assembly nor society in general will tolerate this sort of conduct. There are reasons why a summons and petition and a hearing notice need to be served on an allegedly incompetent person personally.

B. The Probate Court did not have Subject-Matter Jurisdiction to order the Turnover of a Living Person's Will

The Court's Production Orders were not a lawful exercise of its powers.

First, the Probate Court lacks the "power to entertain a suit for the establishment or annulment of a will of a living testator." Alexander v. Walden, 287 S.C. 126, 130, 337 S.E.2d 241, 243 (Ct. App. 1985). Further, the Probate Court lacks the power to determine the validity of a living testator's will. Id. Thus, it logically follows that a probate court has no reason to examine a living testator's will. Nor is there a statutory provision that allows for a person to file her will with the court prior to her death. The General Assembly deliberately omitted the provision of the Uniform Probate Code that provides for such a procedure. Moreover, the probate court has no reason to require an attorney to turn over his client's will for safekeeping because of the attorney's ethical duty to "hold property of others with care required of a professional fiduciary." Cmt. 1, Rule 1.15, SCRP. Finally, an attorney is only required to deliver a will to the probate court after the person's death. S.C. Code Ann. § 62-2-901.

Furthermore, the issue of whether a court can compel the production of a living testator's estate planning documents appears to one of first impression in South Carolina. Fortunately, several states courts have addressed this exact issue and have generally concluded that a court lacks the authority to either (1) generally compel production of the will of a living testator or (2) order a will be turned over to a guardian or conservator. See e.g., In re Guardianship of York, 44 Wn. App. 547, 723 P.2d 448 (Wash. Ct. App. 1986); In Re Conservatorship of Du Nah, 106 Cal. App. 3d 517 (Cal. App. 2d Dist. 1980). For example, in Baumann v. Willis, 721 S.W.2d 535 (Tex. App. 1986), the court addressed an analogous factual situation. There, the guardian filed suit seeking a court order requiring the ward's personal attorney to turn over the original will. The trial court denied the guardian's request. On appeal, the court of appeals affirmed the trial court's decision. The court held that absent a showing that the attorney threatened to destroy the will, the guardian's possession of the will was not necessary to "the administration of the guardianship, was necessary to the guardian, or how its unavailability prevented the guardian from performing her duties." The court concluded:

> The will does not in and of itself have value to the ward such as a note or a security, nor is it a business paper necessary to conduct the business or affairs of the ward. Any entrustment here is not of the document itself, but an entrustment of the keeping of the confidence of the devises contained in the will. These were not to be revealed, but to be kept secret from the specific person who is now guardian and who now seeks possession of the will and, thus, the secret desires or wishes of the ward with respect to the disposition of the ward's estate upon her death.

721 W.2d 535, 538 (Tex. App. 1986).

In our case, the Probate Court did not have the authority to issue the Production Orders. First, it never acquired personal jurisdiction over Ms. Sjoberg. Furthermore, based on the holding in Alexander, the Probate Court lacked the power to examine or make a determination as to whether Ms. Sjoberg's will is valid. Lacking this power, there is simply no reason why the

Probate Court needed to examine her will and other estate planning documents. Second, just as in Baumann, this Court should not force the Appellants to turn over Ms. Sjoberg's estate planning documents because there is no danger that the Appellants will destroy the documents. Third, there has been no showing as to how Ms. Sjoberg's estate planning documents are necessary to the administration of the guardianship, are necessary to her guardian, or how their unavailability prevents her guardian from performing her duties.

II. The Probate Court erred in concluding that the Probate Code granted it the authority to order Appellants turn over the estate planning documents.

Section 62-5-427 of the South Carolina Probate Code (the "Probate Code") provides that the conservator and the court "should take into account any known estate plan of the protected person" when making investments, distributing assets, or exercising certain other powers. S.C. Code Ann. § 62-5-427. Section 62-5-408 of the Probate Code gives the Probate Court power to take certain actions either "directly or through the conservator." § 62-5-408(a). Before exercising one of these enumerated powers, the court must hold a hearing on the "specific relief sought" and "must inquire into and consider any known lifetime gifts or the estate plan of the person . . . " in deciding whether to grant the requested relief. The subsections § 62-5-408 will be addressed in turn:

Section (1) provides that while a petition for appointment of a conservator is pending and after a preliminary hearing of which the protected person had notice, the court may do things with the protected person's property if the petition asks the court for temporary relief. If the court takes the actions requested of it, then it must give notice of its actions to "interested parties" as soon as practicable thereafter.

Section (3)(a) then provides that after a hearing and determination that a conservator needs to be appointed for the protected person, the court, for the benefit of the protected person

and the estate, has all the powers over the protected person's estate that she could exercise if she were not under a disability (such as incompetence), except to make a will.

Section (3) then lays out all the various powers the court can exercise so long as, pursuant to Section (3)(b), in the petition seeking that specific relief, the incapacitated person and her known heirs and her devisees, and her donees, and her beneficiaries are made parties to the action and so long as the petition alleges that the incapacitated person is incapable of consenting to this relief.

Only then, pursuant to Section (3)(c), may the Court consider the protected person's estate plan.

Section (1) envisions a petition separate from the petition for appointment of a conservator ("While a petition for appointment of a conservator ... is pending."). Even if not, Ms. Sjoberg did not get notice of any such petition and did not get notice of any such hearing (as discussed above).

Next, whatever the Court does with this power is limited to actions that are for the protected person's "benefit or the benefit of her dependents." There has been absolutely no showing that an order requiring the production of estate planning documents will benefit Ms. Sjoberg. And she has no dependents.

As to Section (3)(b), there is no allegation in the petition for appointment of a conservator (assuming that petition can be the vehicle for this sort of relief) that Ms. Saine is asking for the specific relief of reviewing or amending Ms. Sjoberg's estate plan (which would be the only reason for it to be revealed). And, again, we do not see how amending Ms. Sjoberg's estate plan would benefit Ms. Sjoberg, and we imagine that is why Ms. Saine did not ask for that specific relief.

As discussed above, the Probate Court was not authorized to force the Appellants to turn over Ms. Sjoberg's estate planning documents based their failure to comply with S.C. Code Ann. § 62-5-408. Furthermore, nothing in the Probate Code suggests that the court or a conservator is entitled to a copy of a conservatee's estate planning documents. This is supported by the fact that South Carolina has not enacted a statute that expressly provides for the production of a conservatee's estate planning documents. California, for example, has enacted such a statute. Cal. Prob. Code § 2586 (West). Importantly, this statute provides "the court may decline to order production of a document if its disclosure is contrary to the conservatee's desire expressed when competent." Law Revision Commission Comments to Cal. Prob. Code § 2586.

Because South Carolina's Probate Code does not contain a similar statute, it is clear that the General Assembly did not intend for the Probate Court to be able to compel the production of Ms. Sjoberg's estate planning documents. Finally, even if authorized by the Probate Code, the Probate Court failed to take into account Ms. Sjoberg's desire that her estate planning documents not be turned over to her daughter.

III. The Probate Court erred in concluding that the attorney-client privilege does not apply to conservatorship proceedings.

In denying Appellants' Motion to Reconsider, the Probate Court concluded that "the issue of privilege is not an issue at all, as the Code contemplates the need for the conservator and the Court to have the estate planning documents of the protected person."

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. The court In re Guardianship of York, 44 Wn. App. 547, 552, 723 P.2d 448 (Wash. Ct. App. 1986), addressed this very issue. There, the Washington Court of Appeals reversed the trial's court order requiring the ward's attorney to produce a copy of the will to the guardian. Id. The court based its holding in part on the attorney-client privilege. The court held that an attorney may not disclose his living client's will prior to their death. The court concluded that even though the Washington Rules of Professional Conduct allow an attorney to disclose privileged information pursuant to a court order, "such compulsion must be used sparingly." Id.

For the same reasons set forth in York, this Court should reverse the Probate Court's order requiring Appellants to turn over Ms. Sjoberg's estate planning documents.

And the same arguments apply to the work product doctrine.

CONCLUSION

In the present appeal, the Probate Court did not have jurisdiction to issue the Production Orders. Moreover, the Probate Court ignored Ms. Sjoberg's wishes and intruded upon the attorney-client relationship in requiring Appellants turn over her estate planning documents.

There was simply no reason for the Probate Court to take such a drastic step. Accordingly, the Probate Court's Production Orders must be reversed.

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Counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC

January 17, 2012

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Robert P. Wood, attorney with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on January 17, 2013 at the following addresses:

Document Served:

Grounds of Appeal

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO. 2012-CP-40-06251

MOTION INFORMATION FORM AND COVER SHEET

Robert J. Thomas and Rogers, Townsend & Thomas, PC ☑ Petitioner,
v.
Richland County Probate court ☐ Respondent.
Check box above indicating submitting party

name, S.C.Bar no. and address of plaintiff's attorney	name, S.C.Bar no. and address of Defendant's attorney
Robert P. Wood (SC Bar # 6206) Rogers Townsend & Thomas, PC 220 Executive Center Drive – Suite 109 (29210) P.O. Box 100200 Columbia, SC 29202-3200 (803) 771-7900 tel. # (803) 343-7017 fax #	Desa Ballard (SC Bar # 498) Ballard Watson Weissenstein P.O. Box 6338 West Columbia, SC 29171-6338 (803) 796-9299 (803) 796-1066

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: This is a motion to reconsider under Rule 59(e).
Estimated Time Needed: 30 minutes
Court Reporter Needed: YES

SECTION II: Motion Fee

☑ PAID —AMOUNT: $ 25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☑ Other: Motion to Alter or Amend, Rule 59(e), SCRCP

SECTION III: Motion Type

☑ Written motion attached
☐ Form Motion —
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/Defendant

March 22, 2013
Date submitted

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (11/2003) 910026-03214

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS 2012-CP-40-06251

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Respondent.

Motion to Reconsider
(Rule 59(e))

2013 MAR 22 PM 4:17
JEANETTE W. GRANT
CLERK OF COURT
RICHLAND COUNTY, SC
FILED

TO: DESA A. BALLARD, ESQ., Attorney for Respondent:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the Court, Petitioners will move the Court to reconsider its Order entered on March 6, 2013 (and received by the undersigned on March 12, 2013) , on the following grounds:

1. The Court incorrectly states that on September 17, 2012, Petitioners "filed a Writ of Mandamus or Writ of Certiorari, commanding the Probate Court to turn over certain files." In fact, on September 17, 2012, Petitioners filed a Petition for a Writ of Mandamus or Writ of Certiorari asking the Court of Common Pleas to enter an order commanding the Richland County Probate Court to turn over to Petitioners copies of certain files. Petitioners did not command the Probate Court to do anything. So, specifically, Petitioners move the Court to alter or amend the first sentence of the second paragraph of its Order to read, "On September 17, 2012, Petitioners filed a Petition for a Writ of Mandamus or Writ of Certiorari asking the Court of Common Pleas to enter an order commanding the Richland County Probate Court to turn over to Petitioners copies of certain files."

2. Petitioners move the Court to make the same change to the other uses of the expression, "Petitioner's Writ of Mandamus" (found in the first sentence of the third paragraph and the second sentence in the last paragraph).

3. At the top of Page 2, the Order states that Petitioners had an opportunity to appear at the October 26, 2011 hearing. Petitioners move the Court to strike this sentence because it is irrelevant. There was no pending order from the Probate Court requiring Petitioners to turn over any papers to the Probate Court or anyone else at that time. In fact, no such order would be entered until July 31, 2012. The only issues then (as far as we know) were whether the Probate Court had jurisdiction over Ms. Sjoberg and whether Ms. Sjoberg was in fact incapacitated.

4. The Order states that Petitioners had the opportunity to challenge the release of the documents they claim are privileged. The Order omits the fact that, once the turnover order was entered on July 31, 2012, Petitioners did in fact challenge the release of the documents as they were required to do by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct. To leave this challenge out is to leave the Order unintentionally misleading and possibly prejudicial to Petitioners some other day. Petitioners therefore move the Court to strike the sentence stating, "Petitioners also had the opportunity to challenge the release of the documents they claim were protected by the attorney-client privilege."

5. The sentence stating that Petitioners had the opportunity to request intervention is irrelevant and potentially misleading. As indicated above, the order requiring Petitioners to turn over confidential papers would not be issued until long after the October 26, 2011, hearing. Petitioners had no need to ask to intervene in the suit: Petitioners felt that Ms. Sjoberg was

well represented by Mr. Johnson at the time and were not under an order to do anything themselves. Therefore, Petitioners move the Court to strike the sentence reading, "Furthermore, Petitioners had the opportunity to request intervention in this case as they represented the party whose documents were ordered to be produced."

6. The phrase reading, "as they [Petitioners] represented the party whose documents were order to be produced" should also be stricken because it is irrelevant and misleading and could be unfairly prejudicial if not removed from this Order. Petitioners did not represent Ms. Sjoberg as the October 26 hearing approached and occurred.

7. The Order incorrectly uses the following sentence out of context: "Additionally, Petitioners could have appealed the Orders [requiring the turnover of the confidential papers]." Petitioners did and did so timely on December 26, 2012, after their motions for reconsideration were denied.

8. The Order incorrectly states that Petitioners could have petitioned the Probate Court to seal the documents or protect them from review by the parties. This statement leads us to fear that the Court misapprehends the nature of the Petition for Writ of Certiorari. Petitioners recognize that if the Probate Court has (or had) personal jurisdiction over their former client, they would have to turn over the documents (and they would be glad to). But Petitioners do not acknowledge and never have acknowledged that the Probate Court has or ever had jurisdiction over Ms. Sjoberg. The very reason Petitioners filed their Petition for Writ of Certiorari was to obtain the Probate Court's file so they could see if Ms. Sjoberg had ever been served properly with the guardianship and conservatorship papers. Once Petitioners received a copy of the Probate Court's file, they saw that Ms. Sjoberg had never been served with the

papers needed for the Probate Court to have jurisdiction to determine Ms. Sjoberg's capacity. So they knew that the turnover orders were not "authorized" within the meaning of Comment 14 to Rule 1.6 that and therefore the attorney-client privilege and work product doctrines prohibited them from honoring the orders. At any rate, Petitioners received and reviewed copies of the Probate Court's files, found what they needed to see (lack of proof of service), and they offered for this mandamus action to be dismissed before the hearing that resulted in this order. Furthermore, if the Probate Court did not have jurisdiction over Ms. Sjoberg, any order sealing the documents or protecting them from review by the parties would be without any force or effect and therefore "unauthorized" within the meaning of Comment 14. So, Petitioners move the Court to strike from the Order the phrase, "Petitioners could have petitioned the Probate Court to seal the documents or protect them from review by the parties."

9. The same applies to the phrase, "or [Petitioners could have] asked the Probate Court to clarify its Order as to whom the documents could be released." If the Probate Court did not have jurisdiction, any clarification regarding to whom the documents could be released would be without any force or effect and therefore "unauthorized" within the meaning of Comment 14. So Petitioners move the Court to strike from the order the phrase, "or [Petitioners could have] asked the Probate Court to clarify its Order as to whom the documents could be released."

10. The sentence reading, "The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code," is simply not true and is not relevant to any issue before the Court. Petitioners do not allege in their Petition that the Order was issued

"pursuant to the provisions of the Probate Code." Petitioners did not concede that statement at the hearing on the motion to dismiss. That conclusion of law was not a basis for the motion to dismiss. That conclusion of law was not argued at the hearing. In fact, that sentence begs the question of the Probate Court's jurisdiction over Ms. Sjoberg (which, again, is not an issue in this Petition for Writ of Mandamus). Therefore, Petitioners move the Court to strike the sentence, "The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code."

11. The Order incorrectly states that the Petition for Writ of Mandamus "did not request that the Probate Court perform a ministerial duty." It did. The Petition reads:

> 1. This Petition seeks a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to t urn over to the Petitioners copies of the Probate Court's file in the cases" involving Ms. Sjoberg.
>
> ***
>
> 6. The Richland County Probate Court is a court of public record and should have allowed [Petitioner] Thomas to review its files before the deadline for submitting a memorandum of law or producing [Ms. Sjoberg's] Will.
>
> ***
>
> 7. The Court had a duty to make its files available to [Petitioners] pursuant to Art. I § 9 of the South Carolina Constitution, the First Amended to the United States Constitution, and the case of (and authorities cited in) Ex Part Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006).
>
> ***
>
> 8. Producing copies of the court's records is a ministerial act.
>
> ***
>
> 11. The Petitioners have no desire to be held in contempt of court and have every intention of obeying a lawful court order. But they cannot obey an order when the court that issued it forces them to produce the Will without allowing the Petitioners an opportunity to determine the authority of the court to enter to the order.

Therefore, because making public a public file is a ministerial duty, Petitioners move the Court to strike the sentence reading, "The Petition for Writ of Mandamus did not request that the Probate Court perform a ministerial duty."

12. Finally, Petitioners move the Court to reconsider its statement that the [Petition for] Writ of Mandamus was not appropriate." Where the authority of a tribunal to enter an order is questioned, and where that tribunal itself has among its public records documents that would reveal that it did not have such authority, but that Court refuses to reveal those public documents, Petitioners do not know of another way to question the authority of such a court as required by Comment 14 to Rule 1.6 other than to have themselves held in contempt and to seek to have the contempt purged by an appeal. Here, Petitioners chose the approach that was not an affront to the Probate Court, and they got exactly what they asked for: Within a matter of weeks they got proof that the Probate Court did not have jurisdiction in Ms. Sjoberg's case.

For these reasons, we move the Court to reconsider its Order of March 6, 2013, and enter an order in conformity herewith.

CERTIFICATE OF SERVICE BY MAIL

C/A No: 2012-CP-40-6251

I, the undersigned employee of the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I served a copy of the foregoing document upon counsel of record and the presiding judge by US. Mail on March 22, 2013 at the following addresses:

2013 MAR 22 PM 4:17

Document Served:

Motion to Reconsider (Rule 59(e))

Counsel and Judge Served:

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

Hon. Allison Renee Lee
Richland County Courthouse
PO Box 192
Columbia, SC 29202-0192

Robert P. Wood

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-6251

RECEIVED
APR 29 2013
SC Court of Appeals

Robert J. Thomas and Rogers Townsend & Thomas, PC, ... Appellants,

v.

Richland County Probate Court ..... Respondent.

NOTICE OF APPEAL

Robert J. Thomas and Rogers Townsend & Thomas, PC appeal the Order of the Honorable Alison Renee Lee, Circuit Court Judge, entered March 6, 2013, and they appeal the Order of Judge Lee entered April 8, 2013. Written notice of entry of the March 6 order was received on March 12, 2013. Written notice of entry of the April 8 order was received on April 15, 2013.

Robert P. Wood (SC Bar No. 6206)
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202
Telephone (803) 771-7900
Fax (803) 343-7017
robert.wood@rtt-law.com

April 29, 2013

Attorney for Appellants

OTHER COUNSEL OF RECORD:

Desa Ballard, Esq.
Stephanie Weissenstein, Esq.
Ballard Watson Weissenstein
PO Box 6338
West Columbia, SC 29171

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

RICHLAND COUNTY FILED
2013 MAR -6 AM 8:58
JEANETTE W. McBRIDE C.C.P. & G.S.

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of March, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

ATTORNEY(S) FOR THE PLAINTIFF(S)

Desa Allen Ballard

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride
Clerk of Court, Jeanette McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	Civil Action No.: 2012-CP-40-6251 ORDER

RICHLAND COUNTY FILED
2013 MAR -6 PM 3:58
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter came before the Court for a hearing on December 12, 2012 on Richland County Probate Court's (the "Probate Court") Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP and 12(b)(6), SCRCP. Present at the hearing were Robert Wood, Esquire, counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively "the Petitioners"), and Desa Ballard, Esquire, counsel for the Probate Court.

On September 17, 2012, Petitioners filed a Writ of Mandamus or Writ of Certiorari, commanding the Probate Court to turn over certain files. Petitioners claim that they sought these files to determine whether the Probate Court had authority to issue an Order requiring Petitioners to turn over various attorney-client privileged documents. On October 18, 2012, the Probate Court, in an exercise of its discretion, issued an Order releasing certain file materials to Mr. Wood and a Protective Order regarding those materials. Mr. Wood indicated that he received the file materials on September 25, 2012, and that the matters addressed in the Writ of Mandamus were now moot. *See* Return to Motion to Dismiss, Dec. 11, 2012.

The Probate Court argues that Petitioner's Writ of Mandamus is inappropriate because the release of the documents was a matter of judicial discretion. The Probate Court urges this Court to dismiss the case on the merits as a matter capable of repetition yet evading review. *See Sloan v. Department of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008). This is not a case in which the matter became moot due to passage of time, but rather, because the Probate Court decided on its own volition to release the documents. The Probate Court created the mootness, yet now seeks to have the merits addressed. The only reason the matter evaded review was because the Probate Court took action.

SCANNED

This Court notes that pursuant to the Probate Court Order, Petitioners had notice of the July 27, 2011 Status Hearing and the opportunity to appear at the October 26, 2011 hearing to determine capacity of Petitioner's former client. Petitioners also had the opportunity to challenge the release of documents they claim were protected by attorney-client privilege. Further, Petitioners had the opportunity to request intervention in this case, as they represented the party whose documents were ordered to be produced. Additionally, Petitioners could have appealed the Orders, petitioned the Probate Court to seal the documents or protect them from review by the parties, or asked the Probate Court to clarify its Order as to whom the documents could be released. Therefore, Petitioners had a choice among remedies.

The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code. Petitioner's Writ of Mandamus did not request that the Probate Court perform a ministerial duty, but was a challenge to authority of the Probate Court to issue the Order requesting that Petitioners produce the documents of the incapacitated person to the appointed conservator. Therefore, a Writ of Mandamus is not appropriate.

ORDER

For all of the reasons set forth above, it is **ORDERED** that the action is dismissed.

AND IT IS SO ORDERED.

Alison Renee Lee

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 6, 2013

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED
2013 APR -8 AM 11:35
JEANETTE W. McBRIDE C.C. & C.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	Civil Action No.: 2012-CP-40-6251 **ORDER**

RICHLAND COUNTY FILED
2013 APR -8 AM 11:35
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Petitioners to alter or amend this Court's March 6, 2013 Order. The Motion for Reconsideration was filed with the Clerk of Court on March 22, 2013.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby DENIES Petitioners' Motion to Reconsider the Order Granting Respondent's Motion to Dismiss. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 5, 2013

SCANNED

CERTIFICATE OF SERVICE BY MAIL
Case No. 2012-CP-40-6251

I, the undersigned attorney, of the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on April 29, 2013, at the following address:

RECEIVED
APR 29 2013
SC Court of Appeals

Document:

NOTICE OF APPEAL

Counsel Served:

Desa Ballard, Esq.
Stephanie Weissenstein, Esq.
Ballard Watson Weissenstein
PO Box 6338
West Columbia, SC 29171

Robert P. Wood (SC Bar No. 6206)

CERTIFICATE OF SERVICE BY MAIL
Case No. 2012-CP-40-6251

I, the undersigned attorney, of the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on April 29, 2013, at the following address:

Document:

NOTICE OF APPEAL

Counsel Served:

Desa Ballard, Esq.
Stephanie Weissenstein, Esq.
Ballard Watson Weissenstein
PO Box 6338
West Columbia, SC 29171

Robert P. Wood (SC Bar No. 6206)

RICHLAND COUNTY
2013 MAY -7 AM 9:24
JEANETTE W. WALKER
C.C.P. & G.S.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-6251

2013 MAY - 1 AM 9:2
JEAN H. TOAL
C.J.S.C.

Robert J. Thomas and Rogers Townsend & Thomas, PC, ... Appellants,

v.

Richland County Probate Court ..... Respondent.

NOTICE OF APPEAL

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Robert P. Wood (SC Bar No. 6206)
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202
Telephone (803) 771-7900
Fax (803) 343-7017
robert.wood@rtt-law.com

April 29, 2013 Attorney for Appellants

OTHER COUNSEL OF RECORD:

Desa Ballard, Esq.
Stephanie Weissenstein, Esq.
Ballard Watson Weissenstein
PO Box 6338
West Columbia, SC 29171

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

RICHLAND COUNTY FILED
2013 MAR -6 PM 3:58
JEANETTE W. McBRIDE C.C.P. & G.S.

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Mar, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride
Clerk of Court, Jeanette McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	Civil Action No.: 2012-CP-40-6251 **ORDER**

RICHLAND COUNTY FILED
2013 MAR -6 PM 3:58
JEANETTE W. McBRIDE C.C.P. & G.S.

This matter came before the Court for a hearing on December 12, 2012 on Richland County Probate Court's (the "Probate Court") Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP and 12(b)(6), SCRCP. Present at the hearing were Robert Wood, Esquire, counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively "the Petitioners"), and Desa Ballard, Esquire, counsel for the Probate Court.

On September 17, 2012, Petitioners filed a Writ of Mandamus or Writ of Certiorari, commanding the Probate Court to turn over certain files. Petitioners claim that they sought these files to determine whether the Probate Court had authority to issue an Order requiring Petitioners to turn over various attorney-client privileged documents. On October 18, 2012, the Probate Court, in an exercise of its discretion, issued an Order releasing certain file materials to Mr. Wood and a Protective Order regarding those materials. Mr. Wood indicated that he received the file materials on September 25, 2012, and that the matters addressed in the Writ of Mandamus were now moot. *See* Return to Motion to Dismiss, Dec. 11, 2012.

The Probate Court argues that Petitioner's Writ of Mandamus is inappropriate because the release of the documents was a matter of judicial discretion. The Probate Court urges this Court to dismiss the case on the merits as a matter capable of repetition yet evading review. *See Sloan v. Department of Transp.*, 379 S.C. 160, 666 S.E.2d 236 (2008). This is not a case in which the matter became moot due to passage of time, but rather, because the Probate Court decided on its own volition to release the documents. The Probate Court created the mootness, yet now seeks to have the merits addressed. The only reason the matter evaded review was because the Probate Court took action.

SCANNED

This Court notes that pursuant to the Probate Court Order, Petitioners had notice of the July 27, 2011 Status Hearing and the opportunity to appear at the October 26, 2011 hearing to determine capacity of Petitioner's former client. Petitioners also had the opportunity to challenge the release of documents they claim were protected by attorney-client privilege. Further, Petitioners had the opportunity to request intervention in this case, as they represented the party whose documents were ordered to be produced. Additionally, Petitioners could have appealed the Orders, petitioned the Probate Court to seal the documents or protect them from review by the parties, or asked the Probate Court to clarify its Order as to whom the documents could be released. Therefore, Petitioners had a choice among remedies.

The Probate Court's Order regarding the documents was issued pursuant to the provisions of the Probate Code. Petitioner's Writ of Mandamus did not request that the Probate Court perform a ministerial duty, but was a challenge to authority of the Probate Court to issue the Order requesting that Petitioners produce the documents of the incapacitated person to the appointed conservator. Therefore, a Writ of Mandamus is not appropriate.

ORDER

For all of the reasons set forth above, it is **ORDERED** that the action is dismissed.

AND IT IS SO ORDERED.

Ali Renee Lee

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 6, 2013

#2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4006251

Robert J Thomas
Rogers Townsend & Thomas PC
PLAINTIFF(S)

Richland County Probate Court
DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED
2013 APR -8 AM 11:35
JEANETTE W. McBRIDE C.C.C.R.C.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 April 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert P. Wood

Desa Allen Ballard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Robert J. Thomas and Rogers Townsend & Thomas, PC, Petitioners, v. Richland County Probate Court, Respondent.	Civil Action No.: 2012-CP-40-6251 **ORDER**

RICHLAND COUNTY
FILED
2013 APR -8 AM 11:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Petitioners to alter or amend this Court's March 6, 2013 Order. The Motion for Reconsideration was filed with the Clerk of Court on March 22, 2013.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any new material fact or any principle of law that was either overlooked or disregarded in the previous Order. Accordingly, this Court hereby **DENIES** Petitioners' Motion to Reconsider the Order Granting Respondent's Motion to Dismiss. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 5, 2013

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE PROBATE COURT Case No. 2011-GC-40-00047 and 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg, Petitioner, v. Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine, Respondents.	**PETITIONER'S MOTION FOR SANCTIONS AGAINST ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC**

YOU WILL PLEASE TAKE NOTICE that the Petitioner, Paula S. Saine (Saine) hereby moves, in accordance with the South Carolina Frivolous Civil Proceedings Sanction Act (SCFCPSA), S.C. Code § 15-36-10, and Rule 11 SCRCP, for sanctions against Robert J. Thomas (Thomas) and Rogers Townsend & Thomas, PC (RTT). The legal and factual grounds for this Motion are set forth below.

LEGAL GROUNDS

SCFCPSA

Under the SCFCPSA, an attorney or litigant may be sanctioned for filing a frivolous pleading, motion or document if: "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification, or reversal of existing law" S.C. Code § 15-36-10(A)(4)(a)(ii) or "a reasonable attorney presented with the same circumstances would

believe the pleading, motion, or document is frivolous." S.C. Code § 15-36-10(A)(4)(a)(iv). An attorney or litigant may also be sanctioned under the SCFCPSA for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" S.C. Code § 13-36-10(A)(4)(b) and for "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." S.C. Code § 15-36-10(A)(4)(c). Sanctions under the SCFCPSA may include "an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party." S.C. Code § 15-36-10(G)(1).

RULE 11 SCRCP

Under Rule 11 SCRCP, "[T]he signature of an attorney or party constitutes a certificate by him ... that to the best of his knowledge, information and belief there is good ground to support it." Rule 11(a) SCRCP. "[A] party and/or the party's attorney may be sanctioned (under Rule 11(a) SCRCP) for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (parenthetical added). "If a pleading, motion or other paper is signed in violation of this Rule (Rule 11(a) SCRCP), the court upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. Rule 11(a) SCRCP (parenthetical added).

FACTUAL GROUNDS

This is a guardianship and conservatorship action brought by Saine in which she sought appointment of herself as guardian and conservator for her elderly mother, Mary Beth Moore Sjoberg

(Sjoberg). This Court appointed Saine Temporary Guardian and Temporary Conservator for Sjoberg under Orders (Appointment Orders). On July 31, 2012, this Court entered an Order (Production Order) that compelled Thomas and RTT, as estate counsel for Sjoberg, to produce Sjoberg's estate planning documents to her Guardian ad litem, Annie Bea Hightower (Hightower). This Court entered an Amended Order (Amended Production Order) on the same subject on August 24, 2012. Thomas and RTT did not produce Sjoberg's estate documents to Hightower. Instead, they filed, on August 30, 2012, a Motion to Reconsider and Claim of Privilege (Motion to Reconsider) that attacked this Court's August 24, 2012 Order.

Thomas and RTT filed two Memoranda in support of the Motion to Reconsider.. Taken together, these Memoranda advance the following arguments:

- this Court's Appointment Orders were invalid because this Court had no personal jurisdiction over Sjoberg for want of service of the initial pleadings on her;
- this Court's Appointment Orders were invalid under the due process clause because Sjoberg was not given notice of the May 9, 2011 appointments hearing;
- this Court's Appointment Orders were invalid because this Court denied Sjoberg the right to counsel of her choice;
- this Court's Production Orders were invalid because this Court had no subject matter jurisdiction to order production of Sjoberg's estate planning documents: and
- this Court's Production Orders were invalid because they compelled Thomas and RTT to violate the attorney-client privilege arising from their representation of Sjoberg.

After review of the parties' written submissions, this Court denied the Motion to Reconsider by Order filed December 4, 2012.

Thomas and RTT filed a Notice of Appeal. On January 17, 2013, Thomas and RTT filed a document in the Circuit Court styled Grounds of Appeal. The Grounds of Appeal restates the arguments set forth in the Memoranda in support of the Motion to Reconsider. The parties to the

appeal submitted briefs, and the Circuit Court heard oral argument. The Circuit Court took the appeal under advisement. While the appeal was under advisement, Sjoberg died. Because of Sjoberg's death, the Circuit Court dismissed the appeal as moot.

The signing and filing of the Motion to Reconsider, the two Memoranda in support of the Motion to Reconsider, the Notice of Appeal and the Grounds of Appeal violate the SCFCPSA and Rule 11(a) SCRCP for the following reasons:

- a reasonable attorney in these circumstances would believe that under the facts, the position advanced in those filings was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification or reversal of existing law;
- a reasonable attorney presented with the same circumstances would believe those filings were frivolous;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not warranted under existing law or any good faith argument for the extension, modification, or reversal of existing law;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not reasonably supported by the facts;
- those filings were frivolous;
- the arguments made in those filings were frivolous.

Saine and the probate estate of Sjoberg have incurred substantial attorneys' fees and costs in responding to these filings.

WHEREFORE, Saine prays that this Court grant this Motion and enter an order sanctioning Thomas and RTT and compelling them to pay her an amount at least equal to the attorneys' fees and costs that she and the probate estate of Sjoberg incurred in responding to their frivolous filings.

Respectfully Submitted,

(SIGNATURE ON THE FOLLOWING PAGE)

AIKEN & HIGHTOWER, P.A.

By: _____

Arthur K. Aiken
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR PETITIONER

Columbia, South Carolina
January 21, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE PROBATE COURT Case No. 2011-GC-40-00047 and 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg, Petitioner, v. Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine, Respondents.	)	**CERTIFICATE OF SERVICE**

I, Arthur K. Aiken, an attorney at Aiken & Hightower, P.A., certify that I have on this day, January 21, 2014, served the below listed document(s) upon counsel of record, via regular U. S. mail, properly addressed as follows:

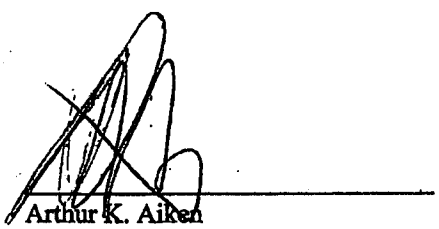
DOCUMENT(S) SERVED

Petitioners' Motion for Sanctions against Robert J. Thomas and Rogers Townsend & Thomas, PC

SERVED UPON

Rita Bragg Caughman
Adams & Reese, LLP
PO Box 2285
Columbia, SC 29202

Robert P. Wood
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202



Arthur K. Aiken

Columbia, SC
January 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S MEMORANDUM IN OPPOSITION TO MOTION FOR SANCTIONS

Robert J. Thomas, Esq. and the law firm of Rogers Townsend & Thomas, PC, submit the following Memorandum in opposition to the *Motion for Sanctions* of Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg. The question before the Court is whether a reasonable attorney would believe that under the same facts and circumstances the actions taken by Mr. Thomas and his law firm were warranted under existing law and not initiated or continued to harass or injure the Petitioner. As the record reveals, Mr. Thomas' actions, and those of his firm, were proper, made in good faith and for the proper purpose of protecting the interests of their client.

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

This is a guardianship and conservatorship action in which Petitioner Paula Saine sought to have herself appointed as guardian and conservator for her mother, Mary Beth Moore Sjoberg. At the time the action was filed, Ms. Sjoberg was 81 years old.

On June 23, 2007, Ms. Sjoberg executed a durable power of attorney naming Petitioner Paula Saine as her attorney-in-fact. (Affidavit of Robert Thomas of May 16, 2014, ¶ 17, attached hereto as Exhibit A.) She executed a health care power of attorney in favor of Ms. Saine of that same date. (Ex. A, ¶ 18.) The durable power of attorney was never filed, and Ms. Sjoberg formally revoked it on December 30, 2009. (Ex. A, ¶¶ 17 & 19.)

On November 12, 2010, Ms. Sjoberg executed her Last Will and Testament, devising her estate to her grandchildren and Petitioner. (Ex. A, ¶ 20.) Ms. Sjoberg left her Will for safe-keeping in the care of her long-time attorney, Robert Thomas, who drafted the Will. (Ex. A, Thomas Aff., ¶ 11.)

Mr. Thomas and Mary Sjoberg were friends for most of their adult lives. (Affidavit of Robert Thomas of September 18, 2012, ¶ 1, attached hereto as Exhibit B.) They met in 1952 while Mr. Thomas was in law school, and Mr. Thomas and his wife frequently got together socially with Ms. Sjoberg and her husband, who pre-deceased her. (Ex. B, ¶¶1 & 2.)

For many of the sixty years of their friendship, and particularly those in the last years of her life, Ms. Sjoberg considered Mr. Thomas her attorney, relying upon him for legal services in her estate planning and business affairs. (Ex. A, ¶ 10.) Ms. Sjoberg executed multiple Last Wills and Testaments and other estate planning documents during Mr. Thomas' representation, all drafted by Mr. Thomas. (Id.)

In his position as both friend and attorney, Mr. Thomas was very aware of the difficult and challenging relationship Ms. Sjoberg had with her daughter, Petitioner Paula Saine, whom she perceived as interfering with her independence. (Ex. A, ¶ 12.) A frequent source of conflict involved Ms. Saine's companion, Carl Caughman, of whom Ms. Saine did not approve. (Id.) On numerous occasions, Mr. Thomas attempted to mediate the conflicts between Ms. Sjoberg and

Ms. Saine with few positive results. (Id.)

In early 2011, the relationship between Ms. Sjoberg and Ms. Saine continued to deteriorate. At Ms. Sjoberg's request, Mr. Thomas sent emails to Ms. Saine, explaining the anger Ms. Sjoberg felt at the loss of her independence. (Ex. B, ¶ 8.) Mr. Thomas suggested a meeting between the three of them, and he sent emails to Ms. Saine on March 28, March 29, April 4, and April 6, 2011, with no response. (Id.)

In late April 2011, Mr. Thomas received and exchanged voice mail messages with attorney Rita Bragg Cullum, who was calling on behalf of Ms. Saine. (Ex. B., ¶ 9.) Ultimately Mr. Thomas and Ms. Cullum spoke, at which time Ms. Cullum questioned Ms. Sjoberg's capacity to make a Will. (Id.) Ms. Cullum then indicated she had drafted some documents and wanted to have copies delivered to Mr. Thomas. (Id. at ¶ 10.) Mr. Thomas offered to drive to her office and pick the documents up, but Ms. Cullum indicated they had not been completed and would send them once finished. (Id.) Mr. Thomas never received the documents from Ms. Cullum. (Id.)

Instead, on April 22, 2011, without any notice to Mr. Thomas, Ms. Cullum filed a summons and petition on behalf of Ms. Saine, styled *In the matter of Mary Beth Moore Sjoberg, Paula S. Saine, as the attorney-in-fact for Mary Beth Moore Sjoberg, Principal, and as the daughter of Mary Beth Moore Sjoberg, Petitioner, vs. Mary Beth Moore Sjoberg, and/or her Guardian Ad Litem, and Paula S. Saine*, action number 2011-GC-40-00048. (Summons & Petition for Incapacity and Appointment of Guardian, attached hereto as Exhibit C.) Through that filing, Ms. Saine sought to have her mother declared incapacitated and to have herself appointed as guardian. (Id.) That same day, Ms. Cullum filed an action on behalf of Ms. Saine for a protective order and to have Ms. Saine appointed as conservator over her mother.

(Summons & Petition for Protective Order and Appointment of Conservator, attached hereto as Exhibit D.) That action was styled *In the Matter of Mary Beth Moore Sjoberg, Paula S. Saine, as the attorney-in-fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg, vs. Mary Beth Moore Sjoberg and/or her Guardian ad Litem, and Paula S. Saine*, action number 2011-CG-40-00047. Despite the fact that Ms. Sjoberg had revoked her durable power of attorney (Ex. A, ¶ 19), Ms. Saine filed both actions in her capacity as attorney-in-fact.

Section 62-5-405(a) of the Probate Code requires that "[a]fter filing of the summons and the petition for appointment of a conservator or other protective order, *the person to be protected must be served personally with the summons and petition*" (emphasis added).

Ms. Sjoberg was not served with either summons or petition, and her attorney, Mr. Thomas, was likewise not served. Instead, Ms. Saine personally accepted service on her mother's behalf as her attorney-in-fact under the same durable power of attorney that was never filed and had been previously revoked. (Acceptances of Service for Guardianship matter and Conservatorship matter, attached hereto as Exhibit E and F, respectively.) Even had the durable power of attorney been effective, it did not grant Ms. Saine the power to accept service of process. (Ex. A, ¶ 17.)

In furtherance of her petition, Ms. Saine filed a Doctor's Affidavit Regarding Incapacity signed by Dr. Larry W. Nelson, Ms. Sjoberg's psychiatrist, dated May 3, 2011. (Doctor's Affidavit Regarding Capacity, attached hereto as Exhibit G.) Dr. Nelson testified that Ms. Sjoberg had permanent incapacity due to "Alzheimer's dementia with severe short term memory impairment and poor judgment." (Id.) However, only five days prior, Dr. Nelson apparently found Ms. Sjoberg to have capacity as he encouraged her to sign a power of attorney in favor of

Petitioner. Dr. Nelson's notes also confirm the on-going conflicts between Ms. Sjoberg and Ms. Saine.[1] (Ex. A, ¶ 21.)

On May 9, 2011, the Court held a status hearing regarding the petitions. (Order Appointing Temporary Conservator, p. 1, attached hereto as Exhibit H.) Section 62-4-405(b) of the South Carolina Probate Code requires that "[n]otice of hearing on a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to the person to be protected, to any person who has filed a request for notice under Section 62-5-406, [and] to interested persons." Ms. Saine and her lawyer were present at the hearing. (Id.) Neither Ms. Sjoberg nor Mr. Thomas received notice of the hearing. As a result, they were not in attendance. (Ex. A, ¶ 15.)

By order of May 12, 2011, the Court appointed Ms. Saine as Temporary Conservator for Ms. Sjoberg. (Id.) In the order, the Court found that "[a]lthough a Durable Power of Attorney is in existence naming the Petitioner as Agent for Mary Beth Moore Sjoberg, the Petitioner does not have possession of the original of such document, and this document has not been recorded." (Id., p. 2, ¶ 4.)

By order of that same day, the Court reached a preliminary finding that Ms. Sjoberg was incapacitated and appointed Ms. Saine as Temporary Guardian. (Order Appointing Temporary Guardian, p. 2, ¶ 4, attached hereto as Exhibit I.)

Section 62-5-407 of the South Carolina Probate Code provides, in pertinent part:

> Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the

[1] For example, on April 18, 2011, Dr. Nelson wrote that he received a phone call from Paula Saine indicating that her mother "remains very angry at her daughter and blames her for not being able to have her car and live independently." (Ex., A, ¶ 21.) The next day, Dr. Nelson met with Ms. Sjoberg and Ms. Saine, noting that "Ms. [Sjoberg] remains extremely angry at her loss of independence. In a fit of anger she 1) changed her door locks and 2) closed out her checking account and threatened to change her will . . . . She is more depressed and wants God to 'take her.'" (Ex. A, ¶ 21.)

> summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. *If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem* (emphasis added).

Nevertheless, on May 16, 2011, the Court appointed Annie Bea Hightower, Esq., guardian *ad litem* for Ms. Sjoberg. (Order Appointing Guardian *Ad Litem*, attached hereto as Exhibit J.)

After the finding of incapacity and the appointment of Ms. Saine as Temporary Conservator and Guardian over her mother, Ms. Cullum sent an email to Mr. Thomas dated May 20, 2011, forwarding the following documents:

- Certificate of Appointment of Temporary Conservator;
- Fiduciary Letter as to Temporary Conservator;
- Certificate of Appointment of Temporary Guardian;
- Order Appointing Temporary Conservator;
- Order Appointing Temporary Guardian;
- Summons and Petition for Finding Incapacity and Appointment of Guardian with attachments; and
- Summons and Petition for Protective Order and Appointment of Conservator with attachments.

(Ex. A, ¶ 22.) Ms. Cullum also requested that she be provided a copy of Ms. Sjoberg's original Durable Power of Attorney dated June 23, 2007, and asked Mr. Thomas "if you are willing to accept service on behalf of *your client*." (Id.) (emphasis added).

Pope Johnson, Esq., appeared on behalf of Ms. Sjoberg on June 22, 2011. (Order Confirming Ongoing Incapacity and Order Regarding Motion to Strike Appearance of Counsel, p. 1, ¶ 2, attached hereto as Exhibit K.)

On July 12, 2011, Ms. Sjoberg scored 25 out of a maximum of 30 points on a Mini-Mental State Examination to determine the severity of cognitive impairment. (Ex. A, ¶ 23.) According to the test, anything greater than or equal to a score of 21 reveals only mild impairment. (Id.)

On October 28, 2011, Ms. Saine filed a Motion to Strike Appearance of Counsel, Pope Johnson, arguing that her mother did not have capacity to contract at the time she retained Mr. Johnson. (Ex. K, p. 1, ¶ 1.)

The Court heard the motion to strike on October 26, 2011. (Id., p. 1, ¶ 2.) In its order of December 2, 2011, granting the motion, the Court found that Ms. Sjoberg "lacked contractual capacity at least since her assessment in May of 2011 and during the course of Mr. Johnson's alleged engagement with her," and that "any contractual engagement between Mrs. Sjoberg and Mr. Johnson is void." (Id., p. 6, ¶ 16 & p. 7, ¶ 17.) In addition, "Mrs. Saine has never retained Mr. Johnson," and "Mr. Johnson does not have an attorney-client relationship with Ms. Sjoberg that pre-dates this Court's ruling on her incapacity." (Id., p. 3, ¶¶ 4 & 6.) The Court went on to find that "[a]t the time of the execution of the Retainer Agreement [with Mr. Johnson], as a matter of law Mrs. Sjoberg had been adjudicated as a person who was incapacitated pursuant to the definition of incapacity in the State of South Carolina." (Id., p. 4, ¶ 8.) Further, "Ms. Sjoberg has remained impaired by reason of mental deficiency to the extent that she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person or property since May 3, 2011." (Id., p. 4, ¶ 7.)

On July 13, 2012, the Court held a conference with Ms. Cullum and Ms. Hightower. (Order for Release of Client Documents, p. 1, ¶ 2, attached hereto as Exhibit L.) At that conference, Ms. Cullum requested that the estate planning documents of Ms. Sjoberg held in safekeeping by Mr. Thomas be turned over to Ms. Saine in her capacity as Temporary Guardian and Conservator. (Id., p. 1, ¶ 1.) She filed no motion and served no subpoena on Mr. Thomas or his firm.

By Order dated July 31, 2012, the Court ordered the documents produced. (Id.)

Specifically, the Court ordered the following:

> That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas, to Paula S. Saine as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

(Id., pp. 2-3, ¶ A.) The Court went on to order that documents related to certain rental property be produced and that "nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas." (Id., p. 3, ¶¶ B-C.)

By letter dated August 3, 2012, Mr. Thomas forwarded to Ms. Hightower information in his possession regarding the rental property; however, Mr. Thomas expressed concern regarding the disclosure of the estate planning documents:

> [W]ith respect to the request for "estate planning documents," I must raise Rule 1.6, SCRPC, as an objection. I cannot imagine anything more confidential tha[n] what a client confides to her lawyer in the course of estate planning.
>
> I am not persuaded by Mary Beth's supposed "consent." Although Mary Beth may be competent to make a new will, it is my hearsay understanding that Judge Belton recently issued a ruling declaring that Mary Beth is incompetent to enter into a *contract*, for which a slightly higher standard of competence is required.

(Ex. A, ¶ 24.) Mr. Thomas went on to question whether the Court ever obtained jurisdiction over Ms. Sjoberg. (Id.)

Ms. Hightower turned Mr. Thomas' letter over to the Court, which *sua sponte* on August 24, 2012, amended its order to clarify what materials were being requested from Mr. Thomas'

files. (Amended Order for Release of Client Documents, p. 2, attached hereto as Exhibit M.) The Court ordered that all documents not previously turned over to Ms. Hightower or Ms. Saine shall be turned over to the Richland County Probate Court for examination and safekeeping. (Id., pp. 2-3, ¶¶ A-B.) In addition, the Court ordered the following:

> That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

(Id., p. 3, ¶ C.)

A request by Mr. Thomas and RTT to examine the Court's file prior to producing documents under the Court's order was verbally denied. (Motion to Reconsider and Claim of Privilege Pending Review of the Court's File, p. 1, ¶ 1, attached hereto as Exhibit N.)

On August 30, 2012, Mr. Thomas and RTT filed a *Motion to Reconsider and Claim of Privilege Pending Review of the Court's File*. (Id.) In that motion, Mr. Thomas and RTT argued the following, among other things:

> Exceedingly mindful of the duty of confidentiality created by Rule 1.6(a) of the South Carolina Rules of Professional Conduct, and also mindful of the distrust between Ms. Sjoberg and Ms. Saine that existed when the Court apparently entered, *ex parte*, one or more of the Appointment Orders, the Firm has determined, in good faith, that it cannot blindly assume that the Production Orders are lawful and proper in scope. But the Firm's request to see the Court's file to make that determination was denied.
>
> Hence, before the Firm will exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to reveal the requested information, the Firm asks to review the Court's file so that the Firm can make an independent evaluation as to whether the Court had jurisdiction to enter the Orders and to verify the existence, legality, scope, and extent of the Appointment Orders. Once the Firm has verified that the Amended Production Order is lawful, the Firm will comply with that Order.

(Id., p. 2.)

In an email of September 6, 2012, Judge Belton requested that Mr. Thomas and RTT submit a memorandum of law supporting its motion, and she forwarded a number of documents from the Court's files. (Affidavit of Robert P. Wood, Esq., ¶ 9, attached hereto as Exhibit O.) In a follow-up email of September 10, 2012, Judge Belton indicated that if additional documents were needed that RTT should contact her judicial clerk, Mr. Spitz, or the director of the Guardian and Conservatorship Division, Ms. Lewis. (Ex. O, ¶ 10.)

Robert Wood, Esq., a member of RTT and representing Mr. Thomas and the firm, sent several emails to Mr. Spitz and Ms. Lewis requesting additional documentation for review. (Ex. O, ¶¶ 11-14.) He never received the documents.

By email of September 14, 2012, Mr. Wood emailed Judge Belton, stating that "I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday." (Ex. O, ¶ 15.)

In an email that same day, Judge Belton wrote the following:

> Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal [of] any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.
>
> Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

(Ex. O, ¶ 15.)

On September 17, 2012, RTT filed a *Memorandum in Support of Motion to Reconsider* per the Court's request. (Ex. O, ¶ 16.) In that memorandum, RTT argued that Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct required that an inquiry be made into the Court's files prior to disclosing privileged information and that because the files had not been made available to RTT, it could not turn over its files without violating the Rules of Professional Conduct. (Id., p. 2-3) Further, RTT raised the lack of personal jurisdiction over Ms. Sjoberg and the lack of notice of the hearing seeking appointment of Ms. Saine as temporary guardian and conservator, among other things. (Id., p. 5)

By Order dated October 18, 2012, apparently in response to RTT's memorandum in support, the Court ordered the release of certain documents from the probate court's file. (Order Releasing Documents and Protective Order, attached hereto as Exhibit P.) Served upon RTT with a copy of the order was a CD containing electronic copies of the subject files. (Id., p. 4.) In its Order, the Court pointed out that "[n]either Mr. Wood nor RTT is counsel of record for any party to this action." (Id., p. 1.) In a footnote, the Court explained that "Robert J. Thomas, a member of RTT, previously represented Mary Beth Moore Sjoberg in connection with estate planning and other matters, before she was determined to lack capacity. RTT has not filed any pleading with this Court requesting that a determination be made that it is an interested party in this matter." (Id., p. 1, n. 1.)

On October 24, 2012, six days after the documents were turned over to RTT, the Court notified the firm that it had until October 26, 2012, to file a supplemental brief related to the firm's motion asking the Court to reconsider its Order of July 31, 2012 and its Amended Order of August 24, 2012. (Ex. O, ¶ 6.)

On October 26, 2012, per the Court's request, RTT filed a *Second Memorandum in Support of Motion to Reconsider.* (Second Memorandum in Support of Motion to Reconsider, attached hereto as Exhibit Q.) In that memorandum, RTT argued that after examining the Court's files it could not turn over the attorney-client privileged records of its client. (Ex. Q, pp. 2 & 9.)

By order of December 4, 2012, the Court denied RTT's motion to reconsider. (Order Denying Motion to Reconsider, attached hereto as Exhibit R.)

RTT filed a Notice of Intent Appeal to the circuit court on December 6, 2012 (Notice of Intent to Appeal, attached hereto as Exhibit S), and subsequently filed its *Grounds of Appeal* on January 17, 2013. (Grounds of Appeal, attached hereto as Exhibit T.) Before the appeal could be decided, Ms. Sjoberg died. Thereafter, on January 10, 2014, the circuit court dismissed the appeal as moot. (Order of Dismissal, attached hereto as Exhibit U.)

Pursuant to section 62-2-901 of the Probate Code, Mr. Thomas delivered Ms. Sjoberg's Last Will and Testament to the probate court. (Ex. A, ¶ 16.)

On January 21, 2014, Petitioner Paula Saine, as "Attorney-in-Fact" and "Daughter," filed the present *Motion for Sanctions against Robert J. Thomas and Rogers Townsend & Thomas, PC* pursuant to the South Carolina Frivolous Proceedings Sanctions Act and Rule 11 of the South Carolina Rules of Civil Procedure. In her motion, Ms. Saine argues that the following filings by RTT were frivolous:

1) Motion to Reconsider and Claim of Privilege Pending Review of the Court's File;
2) Memorandum in Support of Motion to Reconsider;
3) Second Memorandum in Support of Motion to Reconsider;
4) Notice of Appeal; and
5) Grounds of Appeal.

For the reasons set forth below, Petitioner's motion should be denied.

STANDARD OF REVIEW

The South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"), S.C. Code Ann. § 15-36-10 (Supp. 2012) applies a "reasonable attorney" standard to actions taken in a civil or administrative action. Southeastern Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (Ct. App. 2011). According to the Act:

> An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:
>
> (a) filing a frivolous pleading, motion, or document if:
>
> (i) the person has not read the frivolous pleading, motion, or document;
>
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
>
> (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
>
> (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
>
> (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C. Code Ann. § 15-36-10(A)(4)(a)-(c) (Supp. 2012). "All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives." S.C. Code Ann. § 15-36-10(M) (Supp. 2012).

"Unless the court finds by a preponderance of the evidence that an attorney, party or pro

se litigant engaged in advancing a frivolous claim or defense, he or she shall not be sanctioned." S.C. Code Ann. § 15-36-10(C)(2) (Supp. 2012). In addition, "[t]he provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law." S.C. Code Ann. § 15-36-10(J) (Supp. 2012).

In determining whether an attorney, party or pro se litigant has violated the Act, the court shall take into account:

> (1) the number of parties;
>
> (2) the complexity of the claims and defenses;
>
> (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the Act's provisions regarding pleadings, motions, or documents;
>
> (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
>
> (5) previous violations of the Act;
>
> (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he or she violated the Act; and
>
> (7) other factors the court considers just, equitable, or appropriate under the circumstances.

S.C. Code Ann. § 15-36-10(E)(1)-(7) (Supp. 2012).

Rule 11 of the South Carolina Rules of Civil Procedure allows for sanctions when a party acts frivolously. According to Rule 11:

> (a) Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name . . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay . . . . If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion

> or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11, SCRCP.

The decision whether to impose sanctions sounds in equity. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).

DISCUSSION

I. Because Petitioner's authority to act as guardian or conservator for Ms. Sjoberg terminated at Ms. Sjoberg's death, Petitioner has no authority to bring the present motion, which should therefore be denied.

Ms. Saine brings the subject motion for sanctions as Attorney-in-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg. In either case, she lacks the power to do so.

The motion speaks to Ms. Saine as Petitioner, which could refer to "Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg." However, as Ms. Saine had previously been appointed Temporary Guardian and Conservator for Ms. Sjoberg, her powers under the durable power of attorney terminated upon that appointment. See S.C. Code Ann. § 62-5-501(B) (Supp. 2012) ("Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.").[2]

[2] Even absent her appointment as Temporary Guardian and Conservator, Ms. Saine had no power to act under the durable power of attorney dated June 23, 2007. That durable power of attorney was never filed, and Ms. Sjoberg formally revoked it on December 30, 2009. (Ex. A, ¶¶ 17 & 19.)

Should Ms. Saine bring this motion in her capacity as Temporary Guardian and Conservator, that authority terminated upon Ms. Sjoberg's death. See S.C. Code Ann. § 62-5-306 (Supp. 2012) ("The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the . . . ward."); see also 57 C.J.S. Mental Health § 176 ("On the ward's death, the authority, power, and duties of the guardian or conservator cease, and he or she then becomes merely a custodian of his or her former ward's property); S.C. Code Ann. § 62-5-425(d) (Supp. 2012) ("If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.").

Ms. Saine lacks any authority as "Petitioner" to prosecute the subject motion. Consequently, the motion should be denied on this ground alone.

II. Even if Petitioner had authority to bring the subject motion, she waived her right to seek sanctions by failing to file her motion within the required timeframe, and, therefore, the court lacks subject matter jurisdiction to award sanctions.

Motions for sanctions are considered post-trial motions. Holmes v. E. Cooper Cmty. Hosp., Inc., 2014 WL 1233819, *11 (S.C. Mar. 26, 2014) (citing S.C. Code Ann. § 15–36–10(C)(1)). Consequently, a party has ten days after the filing of a court order to file a motion for attorneys' fees and costs. Id. (citing In re Beard, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004) (referring to motions made under the FCPSA as "post-trial motions for sanctions" and finding that the general ten-day limitation for post-trial motions applies to a motion made pursuant to the FCPSA); Pitman v. Republic Leasing Co., 351 S.C. 429, 432–33, 570 S.E.2d 187, 189–90 (Ct. App. 2002) ("Absent specific statutory language vesting the trial judge with continuing jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a

motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."); Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm), 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct. App. 2006) ("[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment." (alteration in original)).). Upon the expiration of the time to file a motion for sanctions, the court lacks subject matter jurisdiction to award attorneys' fees and costs. Pitman, 351 S.C. at 431, 570 S.E.2d at 188.

The fact that Mr. Thomas and RTT filed a Notice of Appeal did not deprive the Court of jurisdiction to consider a timely post-trial motion. See, e.g., Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986) (holding "that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions."). Rather, the court retained jurisdiction until 10 days after its order denying the Motion to Reconsider so that all ancillary matters could be timely heard, and appealed, if necessary, in an efficient and wholesale manner and not in a piecemeal fashion. Holmes, 2014 WL 1233819, *12.

The Probate Court denied RTT's Motion for Reconsideration on December 4, 2012. After December 14, 2012, the Probate Court lacked subject matter jurisdiction to rule on any motion for sanctions filed thereafter. Petitioner filed the subject motion on January 21, 2014.

Because Petitioner did not file her motion for sanctions within ten days of the Court's order denying Mr. Thomas and RTT's motion for reconsideration, Petitioner waived her right to

file a motion for sanctions, and this Honorable Court lacks subject matter jurisdiction to hear and award sanctions. Petitioner's motion should, therefore, be denied on this ground alone.

III. Because Mr. Thomas and RTT's actions in questioning and opposing the order requiring them to turn over their client's original Last Will and Testament and other estate planning documents were reasonable and not frivolous, Petitioner's motion should be denied.

Petitioner asserts that the signing and filing of the Motion to Reconsider, the two memoranda in support of the Motion, the Notice of Appeal and the Grounds for Appeal violate the Act and Rule 11. The grounds for Petitioner's assertion essentially include two arguments: First, that a reasonable attorney under the same facts and circumstances would not believe the arguments were warranted; and two, that the filings and arguments were frivolous. The question before the Court, therefore, is not whether the Court agrees with the legal arguments put forth by Mr. Thomas and RTT in response to an order requiring him to produce client documents, but whether it was reasonable under the facts and circumstances for Mr. Thomas and RTT to make those arguments. In determining whether his arguments were reasonable, the Act requires that the Court take into account a number of items, including, in pertinent part:

> (2) the complexity of the claims and defenses;
>
> (3) the length of time available to the attorney, party or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
>
> (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
>
> (5) previous violations of the provisions of this section;
>
> (6) the response, if any, of the attorney, party or pro se litigation to the allegation that he violated the provisions of this section; and
>
> (7) other factors the court considers just, equitable, or appropriate under the circumstance.

S.C. Code Ann. § 15-36-10(E)(1)-(7) (Supp. 2012).

a. The Motion to Reconsider was reasonable and not frivolous.

It is important when determining whether the actions of Mr. Thomas and RTT were reasonable to examine the context of each filing. Neither Mr. Thomas nor his firm was involved in the litigation prior to receiving the Court's order requiring the production of documents. (Ex. A, ¶ 14.) They were not attorneys of record for any of the parties in the litigation and had never been served with a subpoena pursuant to Rule 45, SCRCP. (Id.) Neither Mr. Thomas nor any member of RTT participated in the conference held on July 13, 2012 between the Court, Ms. Cullum and Ms. Hightower. (Id.)

After that conference, without any motion from any party, the Court ordered the following:

> That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas, to Paula S. Saine as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

(Ex. L, p. 2, ¶ A.)

Mr. Thomas' first response to the Order was a letter dated August 3, 2012, to the guardian *ad litem*, Ms. Hightower. (Ex. A, ¶ 24.) Mr. Thomas forwarded information in his possession concerning the rental property; however, as a reasonable attorney would do, Mr. Thomas expressed concern regarding the disclosure of his client's Last Will and Testament and estate planning documents:

> [W]ith respect to the request for "estate planning documents," I must raise Rule 1.6, SCRPC, as an objection. I cannot imagine anything more confidential tha[n] what a client confides to her lawyer in the course of estate planning.

> I am not persuaded by Mary Beth's supposed "consent." Although Mary Beth may be competent to make a new will, it is my hearsay understanding that Judge Belton recently issued a ruling declaring that Mary Beth is incompetent to enter into a *contract*, for which a slightly higher standard of competence is required.

(Id.) Mr. Thomas went on to question whether the Court ever obtained jurisdiction over Ms. Sjoberg. (Id.)

Ms. Hightower apparently turned Mr. Thomas' letter over to the Court, which *sua sponte* on August 24, 2012, amended its order to clarify what materials were being requested from Mr. Thomas' files. (Ex. M, p. 2.) The Court ordered that all documents not previously turned over to Ms. Hightower or Ms. Saine be turned over to the Richland County Probate Court for examination and safekeeping. (Ex. M, pp. 2-3, ¶¶ A-B.)

Rule 1.6 of the South Carolina Rules of Professional Conduct commands that a "lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1.6, SCRPC. Paragraph (b) allows for the disclosure of client information to the extent the lawyer reasonably believes necessary "to comply with other law or a court order." Rule 1.6(b)(7), SCRPC. However, comment 14 to Rule 1.6 speaks directly to disclosure under court orders and demands that absent informed consent, "the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." Rule 1.6, cmt. 14, SCRPC.

In compliance with Rule 1.6, and in response to the Court's amended order, Mr. Thomas and RTT requested that they be allowed to examine the Court's file prior to producing documents. The Court verbally denied the request. (Ex. O, ¶ 5.)

Rather than ignore the Order and be held in contempt, Mr. Thomas and RTT did what a

reasonable attorney would do. They filed a motion, asking the Court to reconsider its order and claimed a privilege pending review of the Court's file. (Ex. N.) Specifically, Mr. Thomas and RTT argued the following, among other things:

> Exceedingly mindful of the duty of confidentiality created by Rule 1.6(a) of the South Carolina Rules of Professional Conduct, and also mindful of the distrust between Ms. Sjoberg and Ms. Saine that existed when the Court apparently entered, *ex parte*, one or more of the Appointment Orders, the Firm has determined, in good faith, that it cannot blindly assume that the Production Orders are lawful and proper in scope. But the Firm's request to see the Court's file to make that determined was denied.
>
> Hence, before the Firm will exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to reveal the requested information, the Firm asks to review the Court's file so that the Firm can make an independent evaluation as to whether the Court had jurisdiction to enter the Orders and to verify the existence, legality, scope, and extent of the Appointment Orders. Once the Firm has verified that the Amended Production Order is lawful, the Firm will comply with that Order.

(Ex. N, p. 2.)

Petitioner claims RTT's actions in filing the Motion to Reconsider were frivolous; however, considered in light of the Act's criteria that the Court must examine in determining compliance with the Act, Mr. Thomas and RTT acted as reasonable attorneys under the circumstances. Specifically, as to the complexity of the issues, the application of Rule 1.6 and the protection of attorney-client privileged information are highly complicated legal issues, far from simple pedestrian matters. As to time, the Firm had very little opportunity to investigate the matters and reach a determination as to whether they could meet their ethical obligations and comply with the Court's order. And as to the information disclosed or undisclosed, Mr. Thomas and RTT were not privy to the pleadings and other documents in the Probate Court that would have helped inform their decision due to the fact that the Court refused their request for access.

Based upon the above, Mr. Thomas and RTT's actions in filing the Motion to Reconsider were reasonable, made in good faith, and were not frivolous. To the extent Petitioner's motion

relies upon the filing of the Motion to Reconsider, Petitioner's motion should be denied.

b. The first Memorandum in Support of the Motion to Reconsider was reasonable and not frivolous.

In response to Mr. Thomas and RTT's Motion to Reconsider, on September 6, 2012, Judge Belton emailed Mr. Wood and attorney Amy May Landers of RTT. (Ex. O, ¶ 9.) In her email, Judge Belton ordered that a memorandum in support be filed with the Court:

> [I]t is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so *a memorandum of law should be submitted by Mr. Wood.* I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

(Id.)

Given that the Court specifically ordered RTT to file a memorandum of law, it should be axiomatic that compliance with the Court's instruction is not frivolous as a matter of law. Even so, the merits of the memorandum make clear that the actions taken by Mr. Thomas and RTT were very reasonable.

One of the main issues leading to the filing of the Motion to Reconsider was the lack of information available to RTT for review. In an apparent acknowledgment of the difficulty faced by the Firm in navigating the ethical land-mines of Rule 1.6 without the benefit of the Court's file, Judge Belton forwarded various documents to Mr. Wood via her email of September 6. Those documents included:

> [A]ll of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the cases. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included.

(Ex. O, ¶ 9.)

In a follow-up email of September 10, 2012, Judge Belton indicated that if additional

documents were needed that RTT should contact her judicial clerk, Mr. Spitz, or the director of the Guardianship and Conservatorship Division, Ms. Lewis. (Ex. O, ¶ 10.)

Mr. Wood did reach out to Mr. Spitz and Ms. Lewis and requested additional documentation for review.

On September 13, 2012, Mr. Wood emailed Mr. Spitz and Mr. Lewis and requested the summons and complaints from the two files, proofs of service, and any answers or motions filed by Ms. Sjoberg or anyone on her behalf. (Ex. O, ¶ 11.) Mr. Wood went on to write that "I might want more, but I know I need to see these so I can check on jurisdictional issues." (Id.)

Later that same day, Mr. Wood emailed Mr. Spitz and Ms. Lewis and requested copies of the notice of hearing held on May 9 and the proof of service of that notice. (Ex. O, ¶ 12.)

By a third email of that day Mr. Wood requested any "pleadings, motions, reports, or briefs filed by Mike Polk." (Ex. O, ¶ 13.)

At 4:58 pm on September 13, Judge Belton emailed Mr. Wood:

> I just got out of a long hearing. *There will be no problem with you receiving the documents you requested.* The quickest way to get them to you would be to scan and e-mail them, if that works for you. However, as that can't be done until tomorrow I can give you until next Monday to get your responses to me, if needed (emphasis added).

(Email message from Judge Jacqueline Belton to Robert Wood, September 13, 2012, 4:58 pm, attached hereto as Exhibit O(1).)

In response, Mr. Wood wrote the following:

> Could you also scan and email to me:
>
> The report by the visitor who went to Ms. Sjoberg's residence.
>
> I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

(Ex. O, ¶ 14.)

Having not received any of the requested documents, which the Court indicated would arrive "tomorrow," September 14, Mr. Wood emailed Judge Belton at 5:26 pm on September 14, stating that "I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday." (Ex. O, ¶ 15.)

In an email of a few minutes later, Judge Belton wrote the following:

Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal [of] any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

(Ex. O, ¶ 15.)

On September 17, 2012, RTT filed a *Memorandum in Support of Motion to Reconsider*

per the Court's request. (Ex. O, ¶ 16.) In that memorandum, RTT argued that Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct required that an inquiry be made into the Court's files prior to disclosing privileged information and that because the files had not been made available to RTT, it could not turn over its files without violating the Rules of Professional Conduct. (Id., p. 8.) In addition, RTT raised the lack of personal jurisdiction over Ms. Sjoberg since the Petitioner filed the summons and complaint and served herself under a revoked power of attorney that did not grant her the power to accept service. (Id., p. 5.) RTT also raised the lack of notice of the hearing seeking appointment of Ms. Saine as Temporary Guardian and Conservator, among other things. (Id.)

Petitioner claims the first Memorandum in Support of Motion to Reconsider was frivolous. Yet again, considered in light of the criteria that the Court must examine in determining compliance with the Act, the Memorandum was reasonable and justified. First, the issues involved in the memorandum are highly complex, including, but not limited to, the effect lack of proper service and notice has on a Court's authority to compel a non-party to produce attorney-client privileged documents. Second, given the lack of documents produced, the Firm had very little time available to investigate the matters and reach a determination as to whether they could meet their ethical obligations and comply with the Court's order. Finally, even after it was made clear the Firm would receive documents from the Court's file, many of the requested documents were never delivered prior to the memorandum, which would have helped them form their arguments.

Based upon the above, Mr. Thomas and RTT's filing and signing of the first Memorandum in Support of Motion to Reconsider was reasonable, in good faith, and not frivolous. To the extent Petitioner's motion relies upon the filing and signing of the first

Memorandum in Support of the Motion to Reconsider, Petitioner's motion should be denied.

c. The Second Memorandum in Support of Motion to Reconsider was reasonable and not frivolous.

By Order dated October 18, 2012, apparently in response to RTT's first memorandum in support, the Court ordered the release of documents from the probate court's file, which were previously requested by Mr. Wood on September 13, but not produced. (Ex. P.) Served upon RTT with a copy of the order was a CD containing electronic copies of the subject files. (Id., p. 4.)

On October 24, 2012, six days after the documents were turned over to RTT, the Court notified RTT that it had two days until October 26, 2012 to file a supplemental brief related to the firm's motion asking the Court to reconsider its Order of July 31, 2012 and its Amended Order of August 24, 2012. (Ex. O, ¶ 6.) On October 26, 2012, per the Court's request, RTT filed a Second Memorandum in Support of Motion to Reconsider. (Ex. Q.)

Like the first memorandum in support, the second memorandum was requested by the Court. And like the first memorandum, it hardly seems unreasonable or frivolous for RTT to do that which the Court ordered. Again, compliance with a court order should be found "not frivolous" as a matter of law. Nevertheless, the merits of the second memorandum make clear that the actions taken by Mr. Thomas and RTT were very reasonable.

With the benefit of the probate court files, RTT completed its evaluation and determined that it could not reveal information otherwise protected by the attorney-client privilege. The Firm gave numerous reasons for its position in the memorandum, including the following:

- That its client, Ms. Sjoberg, was never personally served with the summonses and petitions (Ex. Q, p. 2);
- That Petitioner accepted service on behalf of her mother, against whom she sought an order of incapacity and appointment as her mother's guardian and conservator, using a durable power of attorney that did not grant the power to

accept service, that had never been filed, and that had been previously revoked (Id., p. 3);

- That Ms. Sjoberg never received notice of the hearing that resulted in the appointment of Petitioner as conservator (Id., p. 4);
- That Petitioner and her counsel knew Mr. Thomas represented Ms. Sjoberg, but filed the petition and moved forward with the hearing resulting in an order of incapacity and appointment of a guardian and conservator without notifying or serving Mr. Thomas (Id., p. 4);
- That Ms. Sjoberg did not, herself, waive service of process or notice of a hearing, but that the Court relied upon waiver by Mr. Johnson, who the Court struck as Ms. Sjoberg's attorney after determining Ms. Sjoberg did not have the capacity to hire him (Id., p. 5);
- That Petitioner did not comply with the statutory mandates of S.C. Code Ann. § 62-5-408 that would give the Court authority to compel production of Ms. Sjoberg's will (Id., pp. 7-8);
- That Mr. Thomas and RTT owed Ms. Sjoberg a duty of confidentiality that could not be negated by a Court without jurisdiction (Id., p. 9); and
- That the documents ordered to be produced were protected by the attorney-client privilege, compelling Mr. Thomas and RTT to assert all nonfrivolous claims that a court order is not authorized pursuant to comment 14 of Rule 1.6, SCRPC (Id., p. 9).

Petitioner asserts that the filing and signing of the second memorandum in support of motion to reconsider was frivolous. Given the criteria that the Court must consider, Mr. Thomas and RTT acted reasonably. Consider the following:

- The above arguments are obviously complex and touch upon some of the bedrock foundations of the practice of law; and
- The Firm received the previously requested documents only six days before the Court notified it that in 48 hours it had to submit a supplemental memorandum. Given the complexity of the legal questions and the significance of the issues, the time allotted to the Firm was very limited in comparison.

Based upon the above, Mr. Thomas and RTT's filing and signing of the second Memorandum in Support of Motion to Reconsider was reasonable, in good faith, and not frivolous. To the extent Petitioner's motion relies upon the filing and signing of the second

Memorandum in support of the Motion to Reconsider, Petitioner's motion should be denied.

d. The filing and signing of the Notice of Appeal and the Grounds for Appeal were not only reasonable and not frivolous, but they are also not subject to sanctions under the Act or Rule 11.

By order of December 4, 2012, the Court denied RTT's motion to reconsider, and RTT appealed. (Exs. R & S, respectively.) Petitioner seeks sanctions against Mr. Thomas and RTT, in part, due to the "signing and filing of . . . the Notice of Appeal and the Grounds of Appeal . . . ." (Petitioner's Motion for Sanctions, p. 4.) Neither the Act nor Rule 11 of the South Carolina Rules of Civil Procedure authorizes sanctions related to appeals.

The Act specifically refers to "a civil or administrative action" and the filing of a "frivolous pleading, motion, or document." S.C. Code Ann. § 15-36-10(A)(4) (Supp. 2012). The points in time in which the court should determine if a claim or defense is frivolous are enumerated, including "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict . . . ." S.C. Code Ann. § 15-36-10(C)(1) (Supp. 2012). Nowhere in the statute does the Act authorize sanctions in appellate court matters or relating in any way to appeals.

Similarly, Rule 11, like all the South Carolina Rules of Civil Procedure, is applicable to matters in "the Court of Common Pleas and . . . all South Carolina courts in suits of a civil nature whether cognizable as cases at law or in equity, subject to certain exceptions contained in Rule 81. Rule 81 provides the rules shall apply to every trial court of civil jurisdiction within the state and shall apply insofar as practicable in magistrates' courts, probate courts and family courts to the extent they are not inconsistent with the statutes and rules governing those courts." Karen L. Huelson, A Snapshot of the South Carolina Court System, S.C. Law., November 2012, at 34, 38 (citing Rule 1, SCRCP and Rule 81, SCRCP). Conversely, "[t]he S.C. Appellate Court Rules . . .

specify the procedures for appeals, petitions and motions before the Supreme Court and the Court of Appeals. They also contain rules governing the conduct, discipline, continuing legal education and other obligations of attorneys and judges in South Carolina, as well as the admission of attorneys to the practice of law." Id. at 34.

"Rule 74 [of the South Carolina Rules of Civil Procedure] makes clear that appeals from inferior courts or administrative agencies are governed by statutes providing for such appeals." Appeals from the probate court to the circuit court are governed by the probate code. See, generally, S.C. Code Ann. § 62-1-308 (Supp. 2012). The Probate Code does not provide for sanctions related to appeals.

Because the Court lacks any authority under the Act or Rule 11 to issue sanctions relating to appeals, Petitioner's motion should be denied to the extent it seeks sanctions for the filing and signing of the Notice of Appeal and the Grounds for Appeal. Further, even if the Act and Rule 11 allowed sanctions for frivolous appeals, that jurisdiction would lie in the appellate court, not the trial court. As such, this Court lacks subject matter jurisdiction to consider whether an appeal was frivolous.

Even if the Court believes it has authority under the Act and Rule 11 to issue sanctions for frivolous appeals, the subject appeal was reasonable and not at all frivolous.

The Grounds for Appeal mirror those enumerated in the second memorandum in support and outlined above in section c. (Ex. T.) These issues are highly complex and highlight the fact there exists a gap in the law concerning the situation at hand. The Probate Code at sections 62-5-424 and 62-5-427 grants certain powers to a conservator; however, it does not address the circumstance faced by Mr. Thomas and RTT – when a Will or other estate planning document is in the possession of the testator's attorney, the testator is later declared incapacitated, and the

conservator then seeks a copy of the Will. In recognition of the lack of clarity in the law and their obligations under Rule 1.6, SCRPC, Mr. Thomas and RTT took the most reasonable avenue they could, which was to protect the very confidences and privileges required of them by the Rules of Professional Conduct.

Further, the appeal was rendered moot by the death of Ms. Sjoberg and thereafter dismissed. Whether the appellate court would have ruled for or against Mr. Thomas and RTT is unknown. The Act contemplates that the party seeking sanctions be a "prevailing party." S.C. Code Ann. § 15-36-10(C)(1) (Supp. 2012). It should not stand that a party be subjected to sanctions when the possibility remains that the party may have prevailed before the appellate court.

For the reasons stated above, and to the extent Petitioner's motion relies upon the filing and signing of the Notice of Appeal and Grounds for Appeal, Petitioner's motion should be denied.

IV. Because Mr. Thomas, after 60 years as a member of the South Carolina Bar and after litigating 106 appeals, has never been sanctioned for violations of the Act or Rule 11, and for other factors highlighted below to be considered by the Court, Petitioner's motion for sanctions should be denied.

In determining whether sanctions are appropriate, section 15-36-10(E)(5) & (7) of the Act requires the Court to consider any previous violations of the provisions of the Act as well as other factors that are just, equitable, or appropriate under the circumstances.

Mr. Thomas has never been sanctioned under the Act or Rule 11 during the entire 60 years he has been practicing law in South Carolina. (Ex. A, ¶ 3.) In fact, Robert Thomas is a highly distinguished member of the bar. He has been practicing law in South Carolina since 1954, and during that time he has earned numerous awards and recognitions. (Ex. A, ¶ 1.) Mr. Thomas is a past member of the Board of Governors, the House of Delegates, and is the Past

President of the Senior Lawyers Division. (Ex. A, ¶ 4.) He also served as chairman of the Practice and Procedure Committee. (Ex. A, ¶ 4.) Mr. Thomas is a fellow in the American College of Trial Attorneys, where membership is by invitation only, and is a former president of the South Carolina Bar Foundation and the Richland County Bar Association. (Ex. A, ¶¶ 4 & 5.) He is AV Peer Review Rated by Martindale-Hubbell, and in January 2009, the South Carolina Bar presented Mr. Thomas with a Trial and Appellate Advocacy Award "In Recognition of [His] Significant Contributions to Trial and Appellate Practices in South Carolina." (Ex. A, ¶¶ 6 & 7.) Mr. Thomas is widely recognized as one of the lions of the South Carolina bar.

Mr. Thomas' long-time friendship and attorney-client relationship with Ms. Sjoberg should also be taken into account. Mr. Thomas and Mary Sjoberg were friends for most of their adult lives. They met in 1952 while Mr. Thomas was in law school, and Mr. Thomas and his wife frequently got together socially with Ms. Sjoberg and her husband, who pre-deceased her. (Ex. B, ¶ 1.)

For most of the sixty years of their friendship, Ms. Sjoberg considered Mr. Thomas her attorney, relying upon him for legal services in her estate planning and business affairs. (Ex. A, ¶ 10.) With Mr. Thomas serving as her attorney, Ms. Sjoberg executed several Last Wills and Testaments and other estate planning documents, which Mr. Thomas drafted. (Ex. A, ¶ 10.)

In his position as both friend and attorney, Mr. Thomas was very aware of the difficult and challenging relationship Ms. Sjoberg had with her daughter, Petitioner Paula Saine, whom she perceived as interfering with her independence. (Ex. A, ¶ 12.) A frequent source of conflict involved Ms. Saine's boyfriend, Carl Caughman, of whom Ms. Saine did not approve. (Id.) On numerous occasions, Mr. Thomas attempted to mediate the conflicts between Ms. Sjoberg and Ms. Saine, but received little or no cooperation. (Id.)

Mr. Thomas was also very much aware of the fact that Ms. Sjoberg valued her privacy and did not leave her estate planning documents in a safe-deposit box or elsewhere, but left it with him in trust for safe-keeping. (Ex. A, ¶ 11.)

Finally, between attorneys and paralegals, Mr. Thomas and the firm expended 183.42 hours examining and analyzing the issues and conflicts presented by the Firm's ethical obligations to its client in the face of an order of the Court. (Ex. O, ¶ 8.) It never charged Ms. Sjoberg a dime for any of this work. (Id.) The easy path would have been to immediately comply with the Court's order. Instead, the Firm invested the equivalent of 10% of a lawyer's billable year in examining and analyzing the issues to ensure compliance with its ethical obligations and to protect the confidences and privileges entrusted to it by its client. It did so because it reasonably believed that that is what the law required.

Finally, attorney Cravens Ravenel has been practicing law in South Carolina for the last forty-four years. (Affidavit of D. Cravens Ravenel, Esq., attached hereto as Exhibit V.) He is an expert in the area of Professional Liability and Ethics, having chaired the South Carolina Supreme Court's Committee on Character and Fitness from 1989 through 2004. (Ex. V, ¶ 2-3.) Mr. Ravenel has reviewed the documents relevant to the present Motion for Sanctions and holds the opinion that Mr. Thomas and RTT acted reasonably in actions and filings pertaining to the estate planning documents of Ms. Sjoberg. (Ex. V, ¶ 4-9.) According to Mr. Ravenel:

> [I]t is my opinion, to a reasonable degree of legal certainty, that Mr. Thomas and his firm acted in accordance with the law in filing and signing their Motion for Reconsideration, Memorandum in Support of Motion for Reconsideration, Second Memorandum in Support of Motion for Reconsideration, Notice of Intent to Appeal and Grounds for Appeal; that these filings were not frivolous, that these filings and the arguments contained therein were warranted under existing law; that these filings were not intended to harass or injury another party, were not brought merely for delay or for any other purpose other than the proper protection of the confidences and privileges of their client, Mary Beth Moore Sjoberg.
>
> It is my opinion that given Ms. Sjoberg's declaration of incapacity and the facts

and circumstances of the underlying case, that Mr. Thomas had little choice but to follow the mandates of Rule 1.6, SCRPC, and investigate the matter and circumstances. It is my opinion that the decision to oppose the production of Ms. Sjoberg's estate planning documents was not frivolous, was based upon the client's interests in having her attorney safeguard her confidences, and that Mr. Thomas and his firm had good grounds to support their decision.

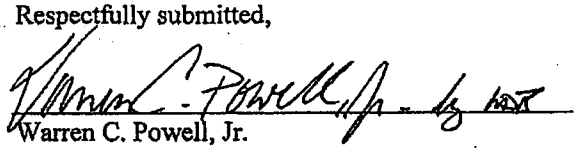
It is my opinion that Mr. Thomas' actions and those of his firm were reasonable under the facts and circumstances of the case and were consistent with the actions of a reasonable attorney. (Ex. V, ¶¶ 7-9.)

In the end, Mr. Thomas turned the Will over to the probate court upon Ms. Sjoberg's death pursuant to S.C. Code Ann. § 62-9-901 (Supp. 2012). Like before, Mr. Thomas did what the law required of him.

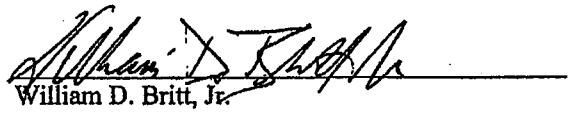
CONCLUSION

For the reasons set forth above, Petitioner's motion for sanctions should be denied.

Respectfully submitted,



Warren C. Powell, Jr.



William D. Britt, Jr.

BRUNER, POWELL, WALL & MULLINS, LLC
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P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693

Attorneys for Robert J. Thomas and Rogers, Townsend & Thomas, PC

May 16, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg
Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

INDEX OF EXHIBITS TO ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S MEMORANDUM IN OPPOSITION TO MOTION FOR SANCTIONS

Exhibit A.	Affidavit of Bob Thomas 5-16-14
Exhibit B.	Affidavit of Bob Thomas 9-18-12
Exhibit C.	Summons & Petition for Incapacity and appointment of guardian. RTT 188-197
Exhibit D.	Summons & Petition for Protective Order & appointment of conservator. RTT 229-235
Exhibit E.	Acceptance of Service in Guardianship matter
Exhibit F.	Acceptance of Service in Conservatorship matter
Exhibit G.	Doctor's Affidavit Regarding Capacity. RTT 237-238
Exhibit H.	Order Appointing Temporary Conservator. RTT 251-254
Exhibit I.	Order Appointing Temporary Guardian. RTT 213-215
Exhibit J.	Order Appointing Guardian Ad Litem. RTT 217-218
Exhibit K.	Order Confirming Ongoing Incapacity and Order Regarding Motion to Strike Appearance of Counsel RTT 266-273
Exhibit L.	Order for Release of Client Documents. RTT 3-5
Exhibit M.	Amended Order for Release of Client Documents. RTT 590-593
Exhibit N.	Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. RTT 966-969
Exhibit O.	Affidavit of Robert P. Wood.
Exhibit O(1).	Email message from Judge Jacqueline Belton to Robert Wood, September 13, 2012, 4:58 pm. RTT 728-733
Exhibit P.	Order Releasing Documents and Protective Order. RTT 608-611
Exhibit Q.	Second Memorandum in Support of Motion to Reconsider. RTT 612-626
Exhibit R.	Order Denying Motion to Reconsider. RTT 645-654
Exhibit S.	Notice of Intent to Appeal. RTT 665-669
Exhibit T.	Grounds of Appeal. RTT 670-684
Exhibit U.	Order of Dismissal. RTT 705
Exhibit V.	Affidavit of Cravens Ravenel.

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

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Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2014 MAY 16 PM 4:29
RICHLAND COUNTY, S.C.

AFFIDAVIT OF ROBERT J. THOMAS, ESQ.

PERSONALLY APPEARED before me Robert J. Thomas, Esq., who, being first duly sworn, deposes and says that the following facts are true:

1. I have been practicing law in South Carolina since 1954.

2. I am one of the founding partners of the law firm of Rogers, Townsend, & Thomas, P.C.

3. I have never been sanctioned by a Court, including sanctions under Rule 11 of the South Carolina Rules of Civil Procedure or under the South Carolina Frivolous Civil Proceedings Sanctions Act.

4. I am a past member of the Board of Governors, the House of Delegates, and am Past President of the Senior Lawyers Division. I served as chairman of the Bar's Practice and Procedure Committee. I am past president of the South Carolina Bar Foundation and the Richland County Bar Association.

5. In 1982, I accepted an invitation to become a fellow to the American College of Trial Lawyers, and I am still a fellow.

6. I have had an AV Peer Review Rating by Martin-Dale Hubbell for many years.

7. In 2009, the South Carolina Bar presented me with a Trial and Appellate Advocacy Award "In Recognition of Significant Contributions to Trial and Appellate Practices in South Carolina."

8. I have also been published as a Super Lawyer.

9. In my practice, I have appeared and represented clients in 106 completed appeals before the South Carolina Supreme Court, the South Carolina Court of Appeals, and the United States Court of Appeals for the Fourth Circuit.

10. As Ms. Sjoberg's friend and lawyer for approximately 60 years, she relied up me for legal services in her estate planning and business affairs. During that time, Ms. Sjoberg executed several Last Wills and Testaments and other estate planning documents, which I drafted.

11. Ms. Sjoberg valued her privacy and left her Last Will and Testament and many other estate planning documents in my care and trust for safekeeping.

12. In my position as both friend and attorney, I was very aware of the conflicts between Ms. Sjoberg and her daughter, Paula Saine. Ms. Sjoberg confided in me that she believed Ms. Saine was interfering with her independence. I was also aware that Ms. Saine wanted to break up the friendship of Ms. Sjoberg and Carl Caughman. On a number of occasions, I offered to mediate the difficulties between Ms. Sjoberg and her daughter. I was unable to resolve the conflicts between the two.

13. By virtue of my position as attorney to Ms. Sjoberg as well as my involvement in the matters involving my firm and the Court's order to produce certain estate planning documents of my client, I am familiar with the facts and circumstances of the underlying matter, including those described herein.

14. Prior to receiving the Court's order that I and the firm release certain confidential and privileged estate planning documents to the Court, neither I nor the firm were involved in the litigation between Ms. Saine and Ms. Sjoberg. We were not attorneys of record for any party to the litigation and were never served with a subpoena. We did not participate in the conference held on July 13, 2012 between the Court, Rita Cullum and Bea Hightower that preceded the order to release records.

15. I learned some time later that on May 9, 2011, the Probate Court held a status hearing regarding Ms. Saine's petitions to be appointed guardian and conservator. Neither I nor my client, Mary Beth Sjoberg, attended the hearing because neither of us received notice.

16. After I learned of Ms. Sjoberg's death, I delivered her Last Will and Testament to the Probate Court as required by section 62-2-901 of the Probate Code.

17. Attached as Exhibit 1 is a true and accurate copy of the Durable Power of Attorney of Mary Beth Sjoberg dated June 23, 2007, which was never filed. It did not grant Ms. Saine the power to accept service of process on behalf of her mother. RTT 6-7

18. Attached as Exhibit 2 is a true and accurate copy of the Health Care Power of Attorney of Mary Beth Sjoberg dated June 23, 2007. RTT 73-77

19. Attached as Exhibit 3 is a true and accurate copy of the Revocation of Durable Power of Attorney Dated June 23, 2007 of Mary Beth Sjoberg dated December 30, 2009. RTT 493-494

#3

20. Attached as Exhibit 4 is a true and accurate copy of the Last Will and Testament of Mary Beth Sjoberg dated November 12, 2010. Ms. Sjoberg left her Will in my care and trust for safekeeping. RTT 108-114

21. Attached as Exhibits 5, 6 and 7 are true and accurate copies of doctor's notes from Larry Nelson, M.D., Ms. Sjoberg's psychiatrist, dated April 18, 19, and 28, 2011, respectively. RTT 310, 308, 306

22. Attached as Exhibit 8 is a true and accurate copy of an email I received from Rita Cullum dated May 20, 2011, without the attachments. RTT 518

23. Attached as Exhibit 9 is a true and accurate copy of a Mini-Mental State Examination taken by Ms. Sjoberg on July 12, 2011. RTT 301

24. Attached as Exhibit 10 is a true and accurate copy of a Letter I wrote to Annie Bea Hightower dated August 3, 2012. RTT 1-2

FURTHER AFFIANT SAYETH NOT.

Robert J. Thomas

SWORN and subscribed to before me
this 15th day of May, 2014.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 01-22-2018

#4

EXHIBIT 1

COPY ORIGINAL HAS NOT BEEN RECORDED WAS LATE REVOKED ENTIRELY

STATE OF SOUTH CAROLINA)
) DURABLE
COUNTY OF RICHLAND) POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, Mary Beth Sjoberg, have constituted and appointed, and by these presents do constitute and appoint Paula S. Saine, as my attorney in fact with power:

a. to sign my name to checks, to endorse checks, to cash checks, to deposit checks, and to do all such things with respect to negotiable instruments other than checks.

b. to satisfy any mortgage which I now own or hereafter acquire.

c. to enter any lockbox in my name anywhere and to add to or remove any contents therefrom.

d. to withdraw and use for my benefit any money which I may have in any bank, savings or investment institutions.

e. to buy, sell, or transfer any stocks, bonds or investment securities in my name.

f. to collect and recover any sums of money or property due me and to prosecute any cause of action which I may have before any of the courts of this or some other state or of the United States.

g. to prosecute in my name, or in her own name on my behalf, any cause of action which I may have against any person or persons, in any court of this state, of any other state, of the United States or of any foreign country and to employ attorneys for such purposes.

This General Power of Attorney shall not be affected by physical disability or mental incompetence by me which might render me incapable of managing my own estate. The authority conferred herein is exercisable notwithstanding any subsequent physical disability or mental

MBS

incompetence on my part.

Should I become mentally disabled, my attorney shall not be required to file any statement or inventory with any court and shall not be required to post a surety bond.

All of which my said attorney is authorized to do as I might or could do if I were personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ~~21st~~ 23rd day of ~~May~~ June, 2007.

Mary Beth Sjoberg
Mary Beth Sjoberg

ATTESTATION

The foregoing Durable Power of Attorney was this 23rd day of June, 2007, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Barbara H. Thomas
Witness 1

Rebecca J. Inman
Witness 2

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

Barbara H. Thomas
Witness 1

Sworn to before me this 23rd day of June, 2007.

Rebecca J. Inman
Notary Public for South Carolina
My Commission Expires: 8/2/10

EXHIBIT 2

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Sjoberg, hereby appoint:
(Principal)

Karl L. Sjoberg
(Name of Agent)

4800 Reamer Avenue
(Street Address)

Columbia, SC 29206
(City, State, Zip)

Home Telephone: (803) 787-2494
Cell Telephone: (803) 609-0395
as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section B, below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

B. The powers granted above do not include the following powers or are subject to the following rules or limitations:

_____

_____

_____

4. ORGAN DONATION (INITIAL ONLY ONE)

My agent may _____; may not __X__ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL).

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 4 PARAGRAPHS)

(1) _____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to

RTT SJOBERG 000074

consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) [illegible] DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

(a) if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

(b) if I am in a state of permanent unconsciousness.

OR

(3) _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) ____ DIRECTIVE IN MY OWN WORDS:

_____

_____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that (INITIAL ONLY ONE):

[illegible] I do not want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

_____ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

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8. SUCCESSORS

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named.

A. First Alternate Agent: [Enter Name of Secondary Agent]

Paula S. Saine

Address: [Enter Address of Secondary Agent]

3105 Grace Hill Road, Columbia, SC 29204

Telephone: [Enter Phone Number of Secondary Agent]

Home (803) 738-1489

Cell (803) 261-4566

B. Second Alternate Agent: [Enter Name of Tertiary Agent]. None

Address: [Enter Address of Tertiary Agent]

Telephone: [Enter Phone Number of Tertiary Agent]

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

RTT SJOBERG 000076

ROA000280

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 23rd day of June, 2007. My current home address is:

3825 Linwood Road
Columbia, SC 29205

Signature: Mary Beth Sjoberg

Name: Mary Beth Sjoberg

WITNESS STATEMENT:

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1
Signature: Barbara W. Thomas Date: June 23, 2007
PrintName: BARBARA W. THOMAS
Telephone: (803) _____
Residence Address: _____

Witness No. 2
Signature: Robert J. Thomas Date: June 23, 2007
Print Name: Robert J. Thomas
Telephone: (803) 227-2035
Residence Address: 5011 Quail Lane, Columbia, SC 29206

EXHIBIT 3

STATE OF SOUTH CAROLINA)
) REVOCATION OF *DURABLE* POWER OF ATTORNEY DATED JUNE 23, 2007
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS that I, Mary Beth Sjoberg, do hereby revoke, cancel and repudiate the *Durable Power of Attorney* wherein I appointed Paula S. Saine as my attorney in fact, which was signed and sworn to on June 23, 2007, in the County of Richland, State of South Carolina, and which may or may not have been filed for record in the Office of the Register of Deeds for Richland County, South Carolina.

WHEREFORE, having revoked my Power of Attorney referred to above, I do hereby request that it be stricken from the records of Richland County, South Carolina, such that it shall be null and void with no validity whatsoever, and I shall be returned to the status that I held prior to my executing such Power of Attorney.

WITNESS my Hand and Seal this 30th day of December, 2009.

Mary Beth Sjoberg
Mary Beth Sjoberg

The foregoing Revocation of *Durable Power of Attorney* dated December 30, 2010, was signed, sealed, published and declared by Mary Beth Sjoberg as and for her revocation of the authority of Paula S. Saine as her attorney in fact, and we, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Carolyn Brooks Brown of Columbia, South Carolina

Robert J. Saine of Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that she saw Mary Beth Sjoberg sign, seal and as her act and deed, deliver the within written REVOCATION OF *DURABLE POWER OF ATTORNEY* DATED December 30, 2009, that said witness together with the other witness whose name is also above subscribed witnessed the execution thereof.

Carolyn Reardon Brown
(witness)

SWORN to before me this 30th
day of December, 2010

Robert J. Inman
Notary Public for South Carolina
My Commission Expires: Aug 2, 2010

EXHIBIT 4

The original of this document has been retained for safekeeping in the office of Rogers Townsend & Thomas PC Attorneys at Law

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LAST WILL AND TESTAMENT
of
MARY BETH SJOBERG

I, Mary Beth Sjoberg, declare the following to be my Last Will and Testament this 12th day of November, 2010.

ITEM I

I direct that all debts of my estate be paid, but I direct that my Personal Representative ("PR") not waive any defenses that may be available. I also direct that my PR in her sole discretion may decline to pay off any debt before it is due.

ITEM II

I direct that all personal property, including household contents, automobiles or personal property be divided among the two families of Paula Sjoberg Saine and Karl Sjoberg, deceased, in such manner as they may agree. Nevertheless, I reserve the option of disposing of personal property in a list signed by me or in my own handwriting. In default of a memorandum by me or an agreement between the two families, I devise said property to Paula S. Saine.

ITEM III

STATEMENT OF INTENT: My late husband and I were blessed with two fine children, each of which gave us three fine grandchildren. Our son, Karl Sjoberg, died last year, leaving his widow, Lori, and their three children. I love all six grandchildren and wish to treat them all equally. Those grandchildren are:

The children of Paula and John Saine:

1. Jacob Lennart ("Jake") Saine
2. Mary Elizabeth ("Mary Lib") Saine
3. Elsa Katherine ("Elsa") Saine

The children of Lori and Karl Sjoberg:

1. Kalyn Marie Sjoberg ("Kalyn")
2. Ashton Kristina Sjoberg ("Ashton")
3. Lennsey Beth Sjoberg ("Lennsey")

MBS

With the foregoing explanation, I devise One Hundred Thousand Dollars ($100,000) each to Kalyn Marie Sjoberg, Ashton Kristina Sjoberg, and Lennsey Beth Sjoberg, but with respect to those under the age of twenty-five (25), I make these devises in trust to their mother as trustee to hold for them until each reaches the age of twenty-five (25). As a trustee, Lori Sjoberg shall have the powers hereinafter granted to a trustee, and I direct that she be authorized to serve without the requirement of any bond or undertaking to secure her faithful performance. These devises are not to be charged with any of the expenses of administration of the estate or with any death taxes that may be owed as a result of the estate or those devises, such taxes and expenses being payable from the residue of my estate. If not paid within one year from the date of my death, the devises are to bear simple interest at the rate of two (2%) percent calculated from the date of my death.

I do not make similar devises to Jacob Lennart ("Jake") Saine, Mary Elizabeth ("Mary Lib") Saine, and Elsa Katherine ("Elsa") Saine, because I am leaving the remainder of my assets to their mother with the knowledge that she will use the money and property left to her for beneficial purposes which will include the care, health, well being, and education of her children.

ITEM IV

I devise all the rest and residue of my estate to my daughter Paula S. Saine. The residue of the estate includes without limitation all real property: my home at 3825 Linwood Road, Columbia, SC; my second home on Hilton Head Island, South Carolina; my investment property on Millwood Avenue, Columbia, South Carolina; and my half interest in the Lake Murray property that I own as a tenant in common with Paula S. Seine. It may also include some funds in checking and investment accounts.

ITEM V

Beneficiary under age twenty-five. With respect to any devise to a beneficiary who has not attained the age of Twenty-five (25) years, or if any real property shall be devised to a person who has not attained the age of Twenty-five (25) at the time of my death, then such share or property shall immediately vest in such beneficiary, but notwithstanding the provisions herein, my trustee shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-five (25) years, using so much of the net income and principal of such share as the trustee deems necessary to provide for the proper medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the trustee deems advisable any other income or resources of such beneficiary or such beneficiary's parents known to the trustee. Any income not so paid or applied shall be accumulated and added to principal. Such beneficiary's share shall be paid over, distributed and conveyed to such beneficiary upon attaining age Twenty-five (25), or if such child shall sooner die, to such child's PR. Whenever my trustee determines it appropriate to pay any money for the benefit of a beneficiary, then such amounts shall be paid out by my trustee in such of the following ways as my trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, support and education of the beneficiary; (4) by my trustee using such amounts directly for the beneficiary's medical care, support and education.

MBL

ITEM VI

I nominate, constitute and appoint as PR of my estate Paula S. Sagone, and I direct that she be authorized to serve without the requirement of any bond or undertaking to secure her faithful performance.

ITEM VII

Powers of Personal Representative and Trustee. My PR and my trustee are authorized in their absolute discretion with respect to any property, real or personal, at any time held under any provision of this will or a trust created by this will, and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my will or by statute or general rules of law:

1. **Retaining property.** To retain any property or undivided interests in property owned by me at the time of my death, including residential property, regardless of any lack of diversification or risk of non-productivity, as long as deemed by my PR or trustee advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the trust or even the entirety thereof

2. **Investing.** To invest and reinvest all or any part of my estate or the trust in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investments trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether made by me or my PR or trustee; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds; to establish, utilize and terminate accounts with security brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my PR and/or trustee may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account.

3. **Sales, exchanges, etc.** To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the trust, for cash or upon credit, to exchange any property of my estate or the trust for other property, at such times and upon such terms and conditions as my PR or trustee may deem best, and no person dealing with my PR or trustee shall be bound to see to the application of any monies paid.

4. **Registration of securities.** To hold any securities or other property in the name of my PR or trustee, as the case may be, in her own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. **Cash.** To keep all or any portion of my estate or the trust in cash and uninvested for reasonable periods of time, without liability for any loss in income by reason thereof.

6. **Stock rights.** To sell or exercise stock subscription rights or conversion rights and similar rights.

7. **Voting stock.** To refrain from voting or to vote shares of stock owned by my estate or the trust at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my estate or the trust.

8. **Mergers, reorganization.** To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my estate or the trust, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under My such plan, to accept and retain new securities received by my PR or trustee pursuant to any such plan, or exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as my PR or trustee may deem advisable in connection therewith.

9. **Borrowing.** To borrow money and to encumber, mortgage or pledge any asset of my estate or the trust for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in my PR or trustee.

10. **Leasing.** To enter for any purpose into a lease as lessor or lessee, with or without option to purchase, or renew for a term within or extending beyond the term of the trust.

11. **Developing.** To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. **Repairing.** To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

HBB

13. **Collecting.** To collect, receive, and receipt for rents, issues, profits, and income of my estate or the trust.

14. **Insuring.** To insure, or to elect not to insure, the assets of my estate or the trust against damage or loss and my PR or trustee against liability with respect to third persons.

15. **Dual positions.** In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with herself in her separate, or any fiduciary capacity.

16. **Compromising and settling.** To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my estate or the trust as my PR or trustee, as the case may be, shall deem best.

17. **Agents, etc.** To employ and compensate agents, accountants, investments advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants and advisors deemed by my PR or trustee needful for the proper administration of my estate or the trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

18. **Principal and income allocations.** To determine irrespective of statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal notwithstanding any determination by the courts or by any custom or statute, and whether or not to establish depreciation reserves; however, the discretion granted herein is not absolute, but rather is subject to the standard of reasonableness and good faith to all beneficiaries, impartiality between income and remainder beneficiaries, and may only be exercised in a fiduciary capacity.

19. **Accounting.** To hold and retain the principal of my estate or the trust undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my PR's or trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof

20. **Payments.** To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my estate or the trust (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset; to distribute, in substitution for fractional interests in property, the entire interests in any property having a value equal to such fractional interests, (and to distribute cash, in addition to such entire interests in property, if necessary, in

order that the sum of such entire interests and cash shall be equal in value to such fractional interests), and to distribute such asset in kind at its appraised value.

21. **Exercising fiduciary powers.** To exercise any power herein granted with reference to the control, management, investment or disposition of my estate or the trust either as PR or trustee without having to declare in which capacity my PR or trustee is acting.

22. **In general.** In general, to exercise all powers in the management of my estate or the trust which any individual could exercise in such individual's own right, upon such terms and conditions as my PR or trustee, as the case may be, deems best, and to do all acts which my PR or trustee, as the case may be, deems necessary or proper to carry out the purposes of this will or the trust created by this will.

23. **Renunciation and disclaimers.** To disclaim and renounce any interest in any property that I may have at the time of my death; and to surrender, release, renounce, or disclaim any one or more of the powers given to my PR or trustee. (Any surrender, release, renunciation, or disclaimer shall be made by written instrument. After any power has been so surrendered, released, renounced, or disclaimed, it shall never again be exercised by any PR or trustee.)

24. **Combining and dividing trusts.** To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my trustee reasonably determines that the administration as a single trust (i) is consistent with my intent, and (ii) facilitates the trust's administration without defeating or impairing the interests of the beneficiaries; and to divide any trust into separate shares or separate trusts if my trustees reasonably deem appropriate and the division (i) is consistent with my intent, and (ii) facilitates the trust's administration without defeating or impairing the interests of the beneficiaries; or to divide any trust with an inclusion ratio (as defined in Code section 2642) of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

ITEM VII

If any beneficiary under this will should die at or near the same time I die under circumstances rendered it doubtful who survived whom, I direct that this will be administered as if the beneficiary predeceased me.

<SIGNATURE, WITNESSES, AND AFFIRMATION APPEAR ON THE NEXT PAGE>

MBS

In witness hereof, I have placed my hand and seal this 12th day of November, 2010.

Mary Beth Sjoberg

Mary Beth Sjoberg

We, the undersigned witnesses, being sworn, declare that we saw the above Mary Beth Sjoberg sign the foregoing instrument in our presence and that we have signed as witnesses in her presence and in the presence of each other.

Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Signed and acknowledged by Mary Beth Sjoberg before me, and subscribed and sworn to before me by the other witness whose name appears above, this 12th day of November, 2010

Notary Public for South Carolina
My commission expires August 17, 2020

EXHIBIT 5

COPY

4/18/11 Phone call from Paula Sini re: her Mother Mary Beth Sjoberg:

Mother remains very angry at daughter and blames her for not being able to have her car and live independently.

Dr. Sjoberg:

1) changed her locks to "keep daughter out"
2) threatened to call the police to "get her car" - I instructed her daughter to not give the car back and show police her letter if they come to see her.
3) changed her will to "leave every thing to the Oliver Gospel Mission"
4) Tried to go to bank and change her bank account today. I told daughter to use the letter I wrote to try to dissuade and thus party (Relative) from helping with this.
5) Is trying to fire her

CPS, P.A.
PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further disclosure is strictly prohibited.

She must have 24/7 help if confined to a Nursing Home - Assisted Care would not accept her.

I will see Mr Sjoberg tomorrow, if she will come in. She needs Neuropsychological testing -

D Felton

RTT SJOBERG 000310

EXHIBIT 6

4/19/11 - 1 hour — Mary Beth Sjoberg, COPY

I met with Mrs. Sjoberg & her daughter, Paula Sahne for 1 hour. Mrs. S. remains extremely angry at her loss of Independence. In a fit of Anger she 1) Changed her door locks and 2) Closed out her checking account and Treatment Corps, P.A. Change her will. I reviewed PRIVILEGED AND CONFIDENTIAL This information has been disclosed to you circumstances with her from records whose confidentiality is protected. Any further redisclosure is strictly prohibited. encouragement to go back to the bank & Paula tomorrow and straighten out her finances. She is very anxious in spite of Seroquel 100 mg TID & is not sleeping or eating well. She is more depressed & wants God to "take her" She did much better when she was on Symbyax. I am going to replace Remeron 15 mg & Zyprexa 5 mg q HS and replace Seroquel & Xanax 0.5 mg to take 1/2 tab BID-TID & 1/2 or 1 tab q HS for anxiety. I will see her in 10 days. I want to refer her for Neuropsych testing. She wants to think about this.

See April 28

Danny Nelson

RTT SJOBERG 000308

EXHIBIT 7

04/21/2011 Mary Beth Sjoberg. I received an information call from Ms. Sjoberg's daughter, Paula Saine. I saw Ms. Sjoberg 2 – 3 days ago and put her back on Zyprexa 5 mg at bedtime. It is already starting to help, as she is less hostile, sleeping better and is more cooperative with her daughter. With her memory problems, she closed out a bank account and opened another one, one day last week, and has already lost her new checks. When I met with her and her daughter this week, I recommended they go see the banker together and make sure that they get a joint account set up, so that her daughter can help her keep from bouncing checks and making double payments to people, as she was doing.
Larry W. Nelson MD LWN/lab 04/25/2011

CPS, P.A.
PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further redisclosure is strictly prohibited.

4/28/11 Mary Beth Sjoberg 8/4/10

Mrs. Sjoberg is seen with her daughter Paula Saine. Per Paula, the Zyprexa has resulted in a marked decrease in hostility. She is sleeping well at night and she has a better appetite. She has chronic diarrhea with at least 2 watery stools per day related to her IBS. The Xanax has worked better than the Seroquel for her anxiety. I will continue. These 2 meds. at present. Xanax 0.5 qn – 1/2 HD is working well.

Ms. Sjoberg & Paula did go to the bank and her accounts are straight. They (the bank) still made a POA so that someone can help ~~c~~ her banking (hopefully Paula). I am encouraging her to allow Paula to become her POA. I don't know, if she will be willing to this or not.

EXHIBIT 8

Bob Thomas

From:	Rita Cullum <rcullum@ellislawhorne.com>
Sent:	Friday, May 20, 2011 11:12 AM
To:	Bob Thomas
Subject:	FW: Sjoberg Documents
Attachments:	Certificate of Appointment of Temporary Conservator.PDF; Fiduciary Letter - Temporary Conservator.PDF; Certified Copy - Order Appointing Temporary Conservator.PDF; Certified Copy - Order Appointing Temporary Guardian.PDF; Filed Summons and Petition for Appointment of Guardian.PDF; Filed Summons and Petition for Appointment of Conservator.PDF; Filed Consent to Appointment of Conservator.PDF; Filed Consent to Appointment of Guardian.PDF; Certificate of Appointment of Temporary Guardian.PDF

Bob,

I have attached the following documents:

Certificate of Appointment of Temporary Conservator
Fiduciary Letter as to Temporary Conservator
Certificate of Appointment of Temporary Guardian
Order Appointing Temporary Conservator
Order Appointing Temporary Guaridan
Summons and Petition for Finding Incapacity and Appointment of Guardian with attachments
Summons and Petition for Protective Order and Appointment of Conservator with attachments

Please provide me with Mrs. Sjoberg's original Durable Power of Attorney dated June 23, 2007.

Please advise if you are willing to accept service on behalf of your client.

As you can see, you need to reverse the charges on Mrs. Sjoberg's credit card. The charges are in excess of the card limit. We intend to dispute the charges.

Rita

Rita Bragg Cullum
rcullum@ellislawhorne.com | 803.212.4960 direct phone | 803.779.4749 facsimile

ELLIS LAWHORNE

1501 Main Street, 5th Floor, Columbia, South Carolina 29201
803.254.4190 tel | 803.779.4749 fax | www.ellislawhorne.com

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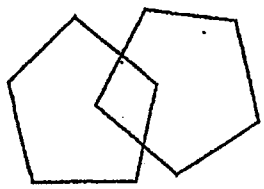
EXHIBIT 9

Mini-Mental State Examination (MMSE)[1,2]*

Make the patient comfortable and establish rapport. Ask questions in the order listed. *Total possible score is 30.*

Mary Beth Sjoberg
7/12/11

Maximum Score	Score	
		ORIENTATION
5	(4)	1. "What is the (year) (season) (date) (day) (month)?"
5	(5)	2. "Where are we?" (state) (county) (town or city) (hospital) (floor).
		REGISTRATION
3	(3)	Ask the patient if you may test his/her memory. Then say the names of 3 unrelated objects, clearly and slowly, about one second for each (eg, "apple," "table," "penny"). After you have said all 3, ask him/her to repeat them. This first repetition determines the score (0-3), but keep saying them until he/she can repeat all 3, up to 6 trials.
		ATTENTION AND CALCULATION
5	(4)	Ask the patient to begin with 100 and count backwards by 7. Stop after 5 subtractions (93, 86, 79, 72, 65). Score the total number of correct answers. If the patient cannot or will not perform the serial 7s task, ask him/her to spell the word "WORLD" backwards. The score is the number of letters in the correct order (eg, DLROW = 5; DLRW = 4; DLORW, DLW = 3; OW = 2; DRLWO = 1).
		100-93-86-72-70-63-DROW
		RECALL
3	(1)	Ask the patient to recall the 3 items repeated above (eg, "apple," "table," "penny").
		LANGUAGE
2	(2)	Naming: Show the patient a wristwatch and ask him/her what it is. Repeat for pencil.
1	(1)	Repetition: Ask the patient to repeat the phrase "No ifs, ands, or buts" after you.
3	(3)	3-Stage Command: Give the patient a piece of blank paper and ask him/her to "take a piece of paper in your right hand, fold it in half, put it on the floor." Score 1 point for each part correctly executed.
1	(1)	Reading: On a blank piece of paper, print the sentence "CLOSE YOUR EYES" in letters large enough for the patient to see clearly. Ask him/her to read it and do what it says. Score 1 point only if he/she actually closes his/her eyes.
1	(1)	Writing: Give the patient a blank piece of paper and ask him/her to write a sentence. Do not dictate a sentence; it is to be written spontaneously. It must contain a subject and verb and be sensible. Correct grammar and punctuation are not necessary.
1	(0)	Copying: Ask the patient to copy the figure of intersecting pentagons exactly as it is. All 10 angles must be present and 2 must intersect to form a 4-sided figure to score 1 point. Tremor and rotation are ignored.



CPS, P.A.

PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further redisclosure is strictly prohibited.

Maximum Total Score	Total Score	*Suggested guideline for determining the severity of cognitive impairment:*
30	(25)	Mild: MMSE ≥21
		Moderate: MMSE 10-20
		Severe: MMSE ≤9

Expected decline in MMSE scores in untreated mild to moderate Alzheimer's patient is 2 to 4 points per year.[3,4]

* Adapted from Folstein et al[1] and Cockrell and Folstein[2] © 1975, 1998 Mini Mental LLC. Used with permission.

References: 1. Folstein MF, Folstein SE, McHugh PR. "Mini-Mental State": a practical method for grading the cognitive state of patients for the clinician. *J Psychiatr Res.* 1975;12:189-198. 2. Cockrell JR, Folstein MF. Mini-Mental State Examination (MMSE). *Psychopharm Bull.* 1988;24:689-692. 3. Becker JT, Huff FJ, Nebes RD, Holland A, Boller F. Neuropsychological function in Alzheimer's disease: pattern of impairment and rates of progression. *Arch Neurol.* 1988;45:263-268. 4. Mortimer JA, Ebbitt B, Jun S-P, Finch MD. Predictors of cognitive and functional progression in patients with probable Alzheimer's disease. *Neurology.* 1992;42:1689-1696.

EXHIBIT 10

From the desk of
Robert J. Thomas
[Of counsel to the law firm of Rogers, Townsend & Thomas, P.C.]
P.O. Box 100200
Columbia, South Carolina 29202-3200
Telephone (803) 227-2035
Fax (803) 343-7017
Toll-free: 1-866-771-7900, Ext. 3010
e-mail: bthomas@rtt-law.com

August 3, 2012

Annie Bea Hightower, Esquire
Aiken and Hightower
2231 Devine Street, Suite 201
Columbia, SC 29205

Re. Mary Beth Moore Sjoberg
RTT File 13628.1

Dear Bea:

Amy Landers May of this firm has informed me that she received a telephone call from you requesting materials out of our files pertaining to Mary Beth Moore Sjoberg for whom you are serving as GAL. I informed Amy that I would deal with the request since Mary Beth has been my friend for 60 years (since 1952) and has been my client for most of those years.

It concerns me that some of the material requested is of a confidential nature, and the request seems to have originated from Rita Bragg Cullum, Esquire. Rita's client is physically attractive, exceptionally intelligent, assertive, and controlling. Perhaps for these reasons, Rita has allowed herself to be intimidated by her client and pushed to do some things that on her own she would not have done.

I do not perceive anything confidential about the lease Mary Beth had with Labor Ready of the Millwood Avenue property. Therefore, enclosed is the information I have with respect to this property and the lease.

However, with respect to the request for "estate planning documents," I must raise Rule 1.6, SCRPC, as an objection. I cannot imagine anything more confidential that what a client confides to her lawyer in the course of estate

planning.

I am not persuaded by Mary Beth's supposed "consent." Although Mary Beth may be competent to make a new will, it is my hearsay understanding that Judge Belton recently issued a ruling declaring that Mary Beth is incompetent to enter into a *contract*, for which a slightly higher standard of competence is required.

Moreover, because of the stealthful way the action against Mary Beth was commenced, I have always considered jurisdiction dubious. I previously called your attention to the case of *Webster v. Clanton*, 259 S.C. 387, 192 S.E.2d 214 (1972).

Mary Beth executed a healthcare power of attorney that I prepared at her request on January 31, 2010, naming Carolyn Brown as her decision maker. I am enclosing a copy of this document because I can see where it might be needed and is therefore not subject to Rule 1.6.

Bea, none of this is a criticism of you. I respect you, and I recognize that you are simply acting at the request of someone else.

Sincerely yours,

Robert J. Thomas

/s

Copies (letter only) to:

Rita Bragg Cullum, Esquire
PO Box 2285
Columbia, SC 29202

Amy Landers May, Esquire

EXHIBIT B

FILED

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT J. THOMAS
COUNTY OF RICHLAND)

12 SEP 18 PM 4:24

AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C

I make this affidavit for the use of the Court and declare under oath that the following facts are true.

1. I met Mary Beth Moore in the fall of 1952, when I was a freshman in law school. I have known her ever since. Back when I was in law school I became very good friends with her and the women she shared an apartment with.

2. Years later, Mary Beth met and married Stig Sjoberg (pronounced Steeg See Burg), from Sweden. They and we (my wife, Barbara, and I) remained friends and frequently got together socially.

3. For most of the 60 years of our friendship I have been Mary Beth's lawyer, and my law partner, Eugene F. Rogers, served as Stig's lawyer until Stig's death. I have also provided legal advice to Paula Sjoberg Saine (Mary Beth's daughter) in a confidential personal matter not related to Mary Beth.

4. Before Paula filed this lawsuit, Paula knew that I represented Mary Beth in her estate planning and in her business affairs.

5. One morning I visited Paula at Mary Beth's home at Paula's request because Paula was interested in Mary Beth's estate plan.

6. Mary Beth is physically weak and very delicate, but her mind was fairly clear in all of 2011. She paid her bills herself and was proud that she always paid them on time. She also enjoyed playing bridge. I point these out to say that when these petitions were filed in May 2011, Mary Beth's mental capacity seemed fine to me and certainly sufficient to make an informed decision about whom her lawyer should be, and certainly sufficient to make a will.

7. Later, when Mary Beth was in HealthSouth recovering from an elbow replacement, Paula took her car keys and her automobile. Paula did this without discussing it with Mary Beth or me. Paula also took Mary Beth's checkbook. This greatly upset Mary Beth.

8. Mary Beth frequently told me she was angry with Paula. At Mary Beth's request, I sent emails to Paula, telling her that Mary Beth was angry about Paula's taking the car and the checkbook, and I asked for their return. I suggested that she (Paula) and I meet to discuss the issue. I offered to take her to lunch or to come by her home one morning (as I had done before). I sent Paula emails on March 28, March 29, April 4, and April 6, 2011. I never received a response. In the last email, I stressed the importance of the meeting and stated that Mary Beth is so angry she is contemplating some decisions that could adversely affect Paula and her family.

9. Instead of receiving a response, in late April 2011, I received and exchanged voice mail messages with Rita Bragg Cullum on Paula's behalf. When Rita and I eventually talked, Rita questioned Mary Beth's capacity to make a will. I say this to emphasize that Rita (Paula's attorney) knew that I represented Mary Beth in her estate planning activities.

10. Rita then told me that she had drafted some documents and wanted to have copies delivered to me. I inferred that she was suggesting something to be done cooperatively, so I offered to stop by her office to pick them up. She then said she had not completed drafting them but would send them to me when completed. I suggested instead that she could scan them and email them to me. She said she would do one or the other. But I never heard from Rita again. I say this to emphasize that Rita knew that I represented Mary Beth in the very matter she would soon raise in her guardian and conservatorship petitions.

11. I learned on Saturday, May 14, that contrary to what she told me, Rita had proceeded *ex parte* on May 10, and obtained what I learned were two orders issued without

notice to me or Mary Beth, one appointing Paula temporary conservator and the other appointing Paula temporary guardian.

12. I am informed and believe that Mary Beth was not properly served with process in these cases, that Mary Beth was effectively denied counsel of her choice to challenge the allegation of incapacity, and that Mary Beth was effectively denied the opportunity to attend the hearing in which her capacity would be determined. I am therefore informed and believe that when Mary Beth's accounts were frozen and she was denied access to her funds, she was deprived of her property without due process of law.

13. I am further informed and believe that the orders commanding my law firm and me to produce documents were entered by a court that did not have personal jurisdiction over Mary Beth, and I therefore believe that if I were to reveal Mary Beth's will and other estate planning documents or any of my file to Bea Hightower, I would be violating the attorney-client privilege and would be subject to discipline by the South Carolina Supreme Court. I am not willing to do that. Mary Beth's will is confidential, Mary Beth fully expected me to keep it confidential.

14. I am also concerned that even a lawful court order would not allow me to turn my file or Mary Beth's estate planning documents over to anyone. Specifically, Rule 1.14(c) of the South Carolina Rules of Professional Conduct only allows me to reveal information about a client with diminished capacity (which I do not know that Mary Beth has) to the extent reasonably necessary to protect Mary Beth's interests. There is no exception in Rule 1.14 for complying with a court order such as there is in Rule 1.6. I cannot understand how producing documents to a lawyer (Bea Hightower) nominated by Rita to serve as Mary Beth's guardian ad litem could possibly serve to protect Mary Beth's interests since Rita's client is directly adverse

to Mary Beth. Finally, I do not know at all that Mary Beth lacks testamentary capacity. If Mary Beth has testamentary capacity, then the contents of her current will and estate planning documents could not possibly be relevant to the court or a potential heir.

Robert J. Thomas

Sworn to before me this 18th day of September, 2012.

Notary Public for South Carolina
My commission expires 3-30-2019

FILED

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT J. THOMAS
COUNTY OF RICHLAND)

12 SEP 18 PM 4:24
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C

I make this affidavit for the use of the Court and declare under oath that the following facts are true.

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to Mary Beth. Finally, I do not know at all that Mary Beth lacks testamentary capacity. If Mary Beth has testamentary capacity, then the contents of her current will and estate planning documents could not possibly be relevant to the court or a potential heir.

Robert J. Thomas

Sworn to before me this 18th day of September, 2012.

Notary Public for South Carolina
My commission expires 3-30-2019

EXHIBIT C

COPY

FILED

11 APR 22 PM 3:56
PRIVATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

SUMMONS

PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

PETITIONER,)

v.)

MARY BETH MOORE SJOBERG,)
~~AND/OR HER GUARDIAN AD LITEM,~~)
AND PAULA S. SAINE)

RESPONDENTS.)

2011 GC40 00048

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

RTT SJOBERG 000188

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

THE MATTER OF)
MARY BETH MOORE SJOBERG)

FILED
11 APR 22 PM 3:56
PROBATE JUDGE
RICHLAND COUNTY, S.C.

PETITION FOR FINDING

CASE NUMBER: 2011 GC40 000648

☒ INCAPACITY
☒ APPOINTMENT OF
☒ GUARDIAN
☐ SUCCESSOR GUARDIAN

Applicant/Petitioner: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone: 803-261-4566

I. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information – Allegedly Incapacitated Person

Name: Mary Beth Moore Sjoberg Age: 81
Date of Birth 09/23/1929
Address: 3825 Linwood Road
City/State/Zip: Columbia, SC 29205
Telephone: 803-782-4766

To my knowledge, above named ☒ *DOES* ☐ *DOES NOT* have a health care power of attorney (See attached as Exhibit "A").
To my knowledge, above named ☐ *DOES* ☒ *DOES NOT* have a living will (Declaration of a Desire for a Natural Death.)

3. Venue for this proceeding in this county because the subject:

☒ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of allegedly incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Incapacitated Person
Paula S. Saine	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1993	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	06/26/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild
(use additional sheet if necessary)			

5. The nature and degree of incapacity is as follows:

Memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

II. **COMPLETE THIS SECTION IF APPOINTMENT IS SOUGHT.**

1. Is it your belief that the allegedly incapacitated person is in need of a guardian/successor guardian as a means of providing continuing care and supervision of the person of said incapacitated person?
☒ YES ☐ NO If no, please explain.

2. The extent to which the guardian should be permitted to give consents or approvals that may be necessary to enable the allegedly incapacitated person to receive medical or other professional care, counsel, treatment or services is as follows:

Full extent, consistent with the allegedly incapacitated person's executed health care power of attorney. See attached as Exhibit "A".

3. The nature and extent of the care, assistance, protection, or supervision which is necessary or desirable for the allegedly incapacitated person under the circumstances is as follows:

Full extent, consistent with the allegedly incapacitated person's executed durable power of attorney. See attached as Exhibit "B".

4. Has a guardian appointed by a Will accepted such appointment?
☒ NO ☐ YES If yes, please explain.
N/A

5. I request the appointment of:

Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
(H): 803-261-4668
E-mail: paulas@sc.rr.com

whose priority for appointment as guardian for the subject is as follows:

☐ a person nominated to serve as guardian by the allegedly incapacitated person
☒ an attorney-in-fact appointed by the allegedly incapacitated person pursuant to Section 62-5-501
☐ spouse of the allegedly incapacitated person
☐ adult child of the allegedly incapacitated person
☐ parent of the allegedly incapacitated person
☐ other relative of the allegedly incapacitated person (Specify): ____
☐ nominated by the person who is caring for the allegedly incapacitated person or paying benefits to him/her
☐ Other (specify) ____

6. Is it necessary to appoint a temporary guardian for the subject until a hearing can be held on this Petition?
☒ NO ☐ YES If yes, please state reasons.

III. ALL PETITIONERS MUST COMPLETE THIS SECTION

1. ☒ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.

2. ☒ I request that the Court determine that the need for the appointment of a guardian is proper, and that the Court appoint **Paula S. Saine** as the guardian for the above person and that Letters of Guardianship be issued to the guardian.

3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship
Mary Beth Moore Sjoberg	3825 Linwood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney in fact; Sole surviving child

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

Attorney: Rita Bregg Cullum
Address: Ellis, Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202
E-mail: rcullum@ellislawhorne.com
Telephone (O): 803-254-4190

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the incapacitated person of Mary Beth Moore Sjoberg.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

FILED

APR 22 PM 3:56

PROBATE JUDGE
RICHLAND COUNTY, SC

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Moore Sjoberg ("Principal"), hereby appoint Paula Saine of 3105 Grace Hill Road, Columbia, SC 29204 (Telephone: (803) 261-4566) as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence in accordance with the provisions of South Carolina Code §62-5-504, as amended.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible.

Accordingly, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

4. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

5. ORGAN DONATION

My agent may MBS / may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

A. MBS GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my Agent believes the burdens of the treatment outweigh the expected benefits. I want my Agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

B. _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, is expected to result in death within a relatively short period of time; or
b. if I am in a state of permanent unconsciousness,

C. _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that:

MBS I want to receive these forms of artificial nutrition and hydration, but they may be withheld or withdrawn by my Agent under the conditions given in paragraph 6 above.

_____ I want to receive these forms of artificial nutrition and hydration, and they may not be withheld or withdrawn by my Agent.

8. SUCCESSORS

If an Agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an Agent who is my spouse is divorced or separated from me, I name the following as successors to my Agent.

Alternate Agent: John Saine
Address: 3105 Grace Hill Road, Columbia, SC 29204
Telephone: (803) 261-4566

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 14th day of October, 2010.

Signature: Mary Beth Sjoberg
Mary Beth Moore Sjoberg

WITNESS STATEMENT

We, David C. Sojourner, Jr. and Gail R. Swayne, declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that she signed or acknowledged this Health Care Power of Attorney in our presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence. We are not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. We are not directly financially responsible for the principal's medical care. We are not entitled to any portion of the principal's estate upon her decease, whether under any will or as an heir by intestate succession, nor are we the beneficiary of an insurance policy on the principal's life, nor do we have a claim against the principal's estate as of this time. Neither of us are the principal's attending physician, nor an employee of the attending physician. Neither of us is an employee of a health facility in which the principal is a patient. We are not appointed as Health Care Agent or Successor Health Care Agent by this document.

Signature: David C Sojourner Jr. Date: October 14, 2010
Witness

Signature: Gail Swayne Date: October 14, 2010
Witness

Subscribed, sworn to, and acknowledged before me by Mary Beth Moore Sjoberg, the Principal, and subscribed and sworn to before me by David C. Sojourner, Jr., witness, this 14th day of October, 2010.

Gail Swayne (SEAL)
Notary Public for South Carolina
My Commission Expires: September 8, 2020

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. I hereby authorize all health care providers, including physicians, nurses and all other persons or entities who may have provided, or be providing, me with any type of health care, to disclose all of my protected health information:

a. To any agent designated in a Durable Power of Attorney or Health Care Power of Attorney signed by me when asked by my agent to do so for the purpose of determining my capacity as defined in the power of attorney or by governing law.

b. To the trustee, or a designated successor trustee, of any trust of which I am a beneficiary or a trustee when asked to do so for the purpose of determining my capacity as defined in the trust or by governing law.

c. To a guardian ad litem, if one is appointed for me, for the purpose of determining whether, and to what extent, a guardianship, conservatorship, or other protective proceeding for me is necessary or desirable.

2. This authorization is intended to provide my health care providers with the authorization necessary to allow each of them to disclose my protected health information to the persons described in Paragraphs a through c above, for the purpose of allowing each of them to make the specified determinations regarding my capacity or need for protective proceedings.

3. Information disclosed by a health care provider pursuant to this authorization is subject to re-disclosure and may no longer be protected by the privacy rules of 45 CFR, Section 164.

4. This authorization may be revoked by a writing signed by me or by my personal representative.

5. This authorization shall expire at the time of my death unless validly revoked prior to that date.

6. Any health care provider may rely upon a photocopy of this document for purposes of making any disclosure authorized herein.

Executed this 14th day of October, 2010.

Mary Beth Sjoberg
Mary Beth Moore Sjoberg

Witness

EXHIBIT D

COPY

FILED

11 APR 22 PM 3:57

PROBATE COURT
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

SUMMONS

PAULA S. SAINE,)
~~AS THE ATTORNEY-IN-FACT FOR~~)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

PETITIONER,)

v.)

MARY BETH MOORE SJOBERG,)
AND/OR HER GUARDIAN AD LITEM,)
AND PAULA S. SAINE)

RESPONDENTS.)

2011 GC40 00047

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, PA
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

RTT SJOBERG 000229

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

THE MATTER OF
MARY BETH MOORE SJOBERG

IN THE PROBATE COURT

PETITION FOR

FILED
APR 22 PM 3:57
RICHLAND COUNTY, S.C.

CASE NUMBER: 2011 GC40 000347

☒ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

Applicant/Petitioner: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204

Telephone: 803-261-4566

1. Nature of interest of undersigned:
Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information -- Minor/Incapacitated Person

Name:	Mary Beth Moore Sjoberg	Age:	81
Date of Birth:	09/23/1929		
Last Four Digits of Social Security Number:	XXX-XX-5077		
Address:	3825 Linwood Road		
City/State/Zip	Columbia, SC 29205		
Telephone (Home):	803-782-4766	(Office/other):	NA

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a will

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a power of attorney

3. Venue for this proceeding is proper in this county because the above minor/incapacitated person:
☒ resides in this county
☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:
Petition for Finding Incapacity and Appointment of Guardian is being filed contemporaneously with this Petition for Appointment of Conservator.

6. Information – Family (list nearest relative first) of allegedly incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship
Paula S. Saine	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	06/28/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild

(use additional sheet if necessary)

8. The following is a general statement of the property, assets and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value
Real Estate	950,000.00
Bank accounts and Certificates of Deposit	60,000.00
Stocks and Bonds and other securities	466,000.00

7. The appointment of a conservator for the above person is necessary because.(state reasons justifying appointment):

The allegedly incapacitated person suffers from memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

8. I request the appointment of:

Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
Telephone (H): 803-261-4566

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides
- ☐ individual or corporation nominated by the protected person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☒ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by will of deceased parent
- ☐ other relative of protected person (specify): _____
- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify): _____
- ☐ other (specify): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Mary Beth Moore Sjoberg	3825 Linwood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney in fact; Sole surviving child

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint Paula S. Saine as the conservator for the above minor/incapacitated person; and that Letters of Conservatorship be issued to the conservator.

Executed this 22nd day of April, 2011.

Signature: Paula S Saine

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22nd day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7-11-2015

Signature: Paula S Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

QUALIFICATIONS AND STATEMENT OF ACCEPTANCE

. . , I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of .

Executed this 22nd day of April, 20 11 .

SWORN to before me this 22nd day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7-11-2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29206
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

RTT SJOBERG 000233

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

The original of this document has been retained for safekeeping in the office of Rogers Townsend & Thomas PC Attorneys at Law

POWER OF ATTORNEY

NOT RECORDED

KNOW ALL MEN BY THESE PRESENTS, that I, Mary Beth Sjoberg, have constituted and appointed, and by these presents do constitute and appoint Paula S. Saino. as my attorney in fact with power:

FILED
APR 22 PM 3:57
RICHLAND COUNTY, S.C.
PROBATE JUDGE
JEANNETTE W. LOCH

a. to sign my name to checks, to endorse checks, to cash checks, to deposit checks, and to do all such things with respect to negotiable instruments other than checks.

b. to satisfy any mortgage which I now own or hereafter acquire.

c. to enter any lockbox in my name anywhere and to add to or remove any contents therefrom.

d. to withdraw and use for my benefit any money which I may have in any bank, savings or investment institutions.

e. to buy, sell, or transfer any stocks, bonds or investment securities in my name.

f. to collect and recover any sums of money or property due me and to prosecute any cause of action which I may have before any of the courts of this or some other state or of the United States.

g. to prosecute in my name, or in her own name on my behalf, any cause of action which I may have against any person or persons, in any court of this state, of any other state, of the United States or of any foreign country and to employ attorneys for such purposes.

This General Power of Attorney shall not be affected by physical disability or mental incompetence by me which might render me incapable of managing my own estate. The authority conferred herein is exercisable notwithstanding any subsequent physical disability or mental

133

incompetence on my part.

Should I become mentally disabled, my attorney shall not be required to file any statement or inventory with any court and shall not be required to post a surety bond.

All of which my said attorney is authorized to do as I might or could do if I were personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ~~21st~~ 23rd day of ~~May~~ June, 2007.

Mary Beth Sjoberg
Mary Beth Sjoberg

ATTESTATION

The foregoing Durable Power of Attorney was this 23rd day of June, 2007, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Barbara H. Thomas
Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

Barbara H. Thomas
Witness 1

Sworn to before me this 23rd day of June, 2007.

Notary Public for South Carolina
My Commission Expires: 8/2/10

EXHIBIT E

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)
)
IN THE MATTER OF)
)
MARY BETH MOORE SJOBERG)
)
) CONSENT
)
)
PAULA S. SAINE,) 2011 GC40 00048
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)
)
PETITIONER,)
)
v.)
)
MARY BETH MOORE SJOBERG,)
AND/OR HER GUARDIAN AD LITEM,)
AND PAULA S. SAINE)
)
)
)
RESPONDENTS.)

THE UNDERSIGNED PAULA S. SAINE, as the attorney-in-fact for Mary Beth Moore Sjoberg and as the daughter of Mary Beth Moore Sjoberg, hereby (1) acknowledges receipt of and (2) voluntarily accepts service of the Petition for Finding Incapacity and Appointment of Guardian, and consents to the relief requested in the Petition for Finding Incapacity and Appointment of Guardian.

Paula S. Saine

EXHIBIT F

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

CONSENT

PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR) 2011 GC40 _____
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

PETITIONER,)

v.)

MARY BETH MOORE SJOBERG,)
AND/OR HER GUARDIAN AD LITEM,)
AND PAULA S. SAINE)

RESPONDENTS.)

FILED
11 APR 22 PM 3:5
AMY [illegible] CULOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

THE UNDERSIGNED PAULA S. SAINE, as the attorney-in-fact for Mary Beth Moore Sjoberg and as the daughter of Mary Beth Moore Sjoberg, hereby (1) acknowledges receipt of and (2) voluntarily accepts service of the Petition for Protective Order and Appointment of Conservator, and consents to the relief requested in the Petition for Protective Order and Appointment of Conservator.

Paula S. Saine

EXHIBIT G

FILED

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: RICHLAND)
) DOCTOR'S AFFIDAVIT REGARDING CAPACITY
IN THE MATTER OF: MARY BETH MOORE SJOBERG)
) CASE NUMBER: 2011-GC-40-00047 AND 2011-GC-40-00048

PM 2:36
AMY W. ...
CHIEF JUDGE
RICHLAND COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME Larry W. Nelson, M.D.
Physician

who being duly sworn deposes and says:

I am (Please set forth your medical credentials): Larry W. Nelson M.D.

Business address and phone: Carolina Psychiatric Services, P.A.
160 Medical Circle, 1st Floor, West Columbia, SC 29169

Date and Place of this examination: 11/8/10; 11/16/10; 12/6/10; 1/4/11; 3/23/11; 4/19/11; 4/28/11

I have had previous opportunities to evaluate the patient? ☑ Yes ☐ No
(If yes, indicate dates and circumstances within the last year and/or reference if you have been the patient's personal physician for a period of time and the time frame.)

Is the patient oriented to time and place? ☑ Yes ☐ No

What is the physical condition and age of the patient? (Detail any other significant factors that may be relevant to the Court.) 81 y/o; Recent Surgery for compression fractures of back (11/5/11) & fractured R. Arm (11/6/11); Chronic degenerative disease; Unable to physically & mentally care for herself Now

Set forth the results of any tests which bear on the issue of incapacity and date of test:
No formal testing -

BASED UPON MY EVALUATION OF THIS PATIENT:

☐ I DO NOT believe this patient is an "incapacitated person".[1] I do not find any impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person, property, or finances.

☑ I DO BELIEVE THIS PATIENT IS AN "INCAPACITATED PERSON" and in need of a Guardian and/or Conservator as I find him/her to be impaired by reason of (CHECK ALL THAT APPLY AND SET OUT AND DESCRIBE THE LIMITATIONS RESULTING FROM EACH.)

- ☐ Mental Illness
- ☑ Mental Deficiency
- ☐ Physical Illness or Disability
- ☐ Advanced Age
- ☐ Chronic Use of Drugs
- ☐ Chronic Intoxication
- ☐ Other

[1] "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property. (Section 62-5-101 of the South Carolina Code of Laws)

Is this condition permanent or temporary? Permanent: Ms. Sjoberg has Alzheimers Dementia with Severe short term memory Impairment and poor judgement
Can Patient perform activities of daily living? Ms. Sjoberg can Assist with most ADLs but will Need 24/7 Caregivers in her home or Long Term Assisted care
What other information do you believe would assist the Court in making a determination of capacity?
Mrs. Sjoberg's Dementia is permanent and will become Progressively more Severe with time. She also has Severe chronic Depression with Anxiety. She expresses a desire to die rather than to live in the dependent state that she is in. She is safe from a suicide Attempt as long as she has Continuous Monitoring in her own home or Assisted Care and is not Allowed to Self Administer her Medication

FURTHER AFFIANT SAYETH NOT.

Physician's Signature: Larry W Nelson MD

Print Name: Larry W. Nelson, M.D.

Examiner: M.D.
Credentials (M.D., Ph.D., D.O., R.N.)

Address: Carolina Psychiatric Services, P.A.
160 Medical Circle, 1st Floor, West Columbia, South Carolina 29169.

Telephone: 803-796-6811

SWORN to before me this 3rd day of May, 20 11

Notary Public for South Carolina
My Commission Expires: 2/12, 2020

FAILURE TO PROVIDE DETAILED RESPONSES TO THE QUESTIONS ON THIS AFFIDAVIT MAY OBLIGATE YOU TO APPEAR AT THE PROBATE COURT HEARING.

All information MUST be typed or clearly printed.

EXHIBIT H

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND) CASE NO.: 2011-GC-40-00047
)
IN THE MATTER OF:)
MARY BETH MOORE SJOBERG,)
)
PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)
)
PETITIONER.)

FILED
11 MAY 12 PM 5:36
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER APPOINTING TEMPORARY CONSERVATOR

THIS MATTER CAME BEFORE THE COURT on May 9, 2011, for a status hearing regarding the pending Conservatorship action for Mary Beth Moore Sjoberg. Present at the hearing were Paula S. Saine, daughter of Mary Beth Moore Sjoberg, and Rita Bragg Cullum, Attorney for Paula S. Saine. This matter was commenced on April 22, 2011, with the filing of a Petition for Appointment of Conservator and Protective Order by Rita Bragg Cullum on behalf of Paula S. Saine. In the Petition, Paula S. Saine requests that she be appointed as Conservator for her mother because she suffers from memory impairment, Alzheimer's dementia, physical limitations, and loss of the ability to live independently. Because the Court has not yet received all documentation necessary to schedule a hearing on the appointment of a Permanent Conservator, the Petitioner also requests that she be appointed as Temporary Conservator to immediately help with her financial affairsdue to mother's mental deficiency.

On May 9, 2011, a status hearing was held to address the need for the appointment of a Temporary Conservator. Prior to the hearing a sworn Doctor's Affidavit and Examiner's Reportcompleted by DoctorLarry W. Nelson, M.D.was filed with the Court indicating his medical

opinion that Paula S. Sainemeets the definition of an incapacitated individual pursuant to S.C. Code Ann. § 62-5-101, 1976, as amended, due to mental deficiency.

After considering all filed documents and information presented at the status hearing, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of this action, pursuant to S.C. Code Ann. § 62-5-102(a), 1976, as amended.
2. That venue for this matter is proper in RichlandCounty, pursuant to S.C. Code Ann. § 62-5-403, 1976, as amended.
3. That based on the Doctor's Affidavit Regarding Capacity and Examiner's Report submitted by Larry W. Nelson, M.D., the Court concludes that Mary Beth Moore Sjoberg meets the definition of an incapacitated person, as defined by S.C. Code Ann. § 62-5-101(1), 1976, as amended, due to mental deficiency.
4. That due to Mary Beth Moore Sjoberg's incapacity, she is in need of a Temporary Conservator to manage her financial affairs. Although a Durable Power of Attorney is in existence naming the Petitioner as Agent for Mary Beth Moore Sjoberg, the Petitioner does not have possession of the original of such document, and this document has not been recorded. Thus, it cannot be utilized for the management of the financial affairs of Mary Beth Moore Sjoberg. As there is no fiduciary currently in place to make financial decisions for Mary Beth Moore Sjoberg, the Court concludes that the appointment of a Temporary Conservator is immediately necessary.
5. That the Court has been provided information in the form of a SLED Report and Credit Report pertaining to the Petitioner reflecting that she is responsible person, and the

testimony presented indicates that she has been assisting Mary Beth Moore Sjoberg in the management of her financial affairs for some time.

6. That pursuant to S.C. Code Ann. § 62-5-408, 1976, as amended, the Court concludes that Paula S. Saine is fit and proper to serve as the Temporary Conservator for Mary Beth Moore Sjoberg until a full hearing on the Petition can be held and a Perman Conservator is appointed.

7. That the Court concludes that the Temporary Conservator should be specifica authorized to close, change, and/or reopen any bank accounts held in the name of Ma Beth Moore Sjoberg, and to execute any paperwork regarding the representati designation concerning any benefits or payments received by Mary Beth Moore Sjoberg, as needed to effectively manage Mrs. Sjoberg's financial affairs. This includes the authority to make any and all changes necessary to the representative payee designation or depository bank information required for benefits Mary Beth Moore Sjoberg is receiving from the Social Security Administration or any other entity or agency.

8. That no other individual, besides the Temporary Conservator named herein, should have access to the funds of Mary Beth Moore Sjoberg.

9. That it would be in Mrs. Sjoberg's best interest for a Guardian *ad Litem* to be appointed as soon as possible.

THEREFORE, IT IS HEREBY ORDERED that:

A. Paula S. Saine shall be appointed Temporary Conservator for Mary Beth Moore Sjoberg, with the limited authority to make only those financial decisions for Mary Beth Moore Sjobergthat are immediately necessary for her general care and welfare. This includes the power to make deposits and disbursements on Mary Beth Moore Sjoberg's behalf through bank accounts held at Bank of America or

any other financial institution holding assets in the name of Mary Beth Moore Sjoberg.

B. The Temporary Conservator shall investigate the existence of any and all assets owned by Mary Beth Moore Sjoberg and shall report those assets to the Court.

C. That the Temporary Conservator shall be authorized to close, change, and/or reopen any bank accounts held in the name of Mary Beth Moore Sjoberg. This includes the authority to make any and all changes necessary with regard to the representative payee designation or depository bank information required for benefits Mary Beth Moore Sjoberg is receiving from the Social Security Administration or any other entity or agency.

D. That the Temporary Conservator shall file a final accounting with this Court detailing all receipts and disbursements made on behalf of Mary Beth Moore Sjoberg. This accounting shall cover the period from the date of this Order, through the termination of her role as the Temporary Conservator.

E. There shall be a status hearing scheduled for no more than forty (40) days from the date of this Order, and the Guardian *ad Litem* and the Temporary Conservator shall be prepared to give a preliminary report and updates, respectively, at that time.

IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

May 12, 2011
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by: Anne Marie Amann

RTT SJOBERG 000254

EXHIBIT I

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: MARY BETH MOORE SJOBERG, PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG, PETITIONER.	)	IN THE PROBATE COURT CASE NO.: 2011-GC-40-00048

FILED
11 MAY 12 PM 5:36
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER APPOINTING TEMPORARY GUARDIAN

THIS MATTER IS BEFORE THE COURT upon the filing of a Summons and Petition for Appointment of a Guardian for Mary Beth Moore Sjoberg on April 22, 2011 by Rita Bragg Cullum, attorney for Paula S. Saine, daughter of Mary Beth Moore Sjoberg. In her Petition, Paula S. Saine seeks appointment as Guardian and later requested the emergency appointment as Temporary Guardian due to her mother's mental deficiency. The Court has received a Doctor's Affidavit Regarding Capacity from Larry W. Nelson, M.D., as well as an Examiner's Report from the same physician, in which he states his medical opinion that Mary Beth Moore Sjoberg is an incapacitated person pursuant to S.C. Code Ann. § 62-5-101, 1976, as amended due to mental deficiency. The critical nature of Mrs. Sjoberg's present health, as indicated by Dr. Larry W. Nelson's report, and the testimony offered to the Court on May 9, 2011, as well as the need to make immediate health care decisions makes it necessary to make an emergency appointment before a permanent guardianship hearing can be held.

After a review of all pleadings and documents available at this time, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That this Court has subject matter jurisdiction of this action, pursuant to S.C. Code Ann. § 62-5-102(a), 1976, as amended.
2. That Mary Beth Moore Sjobergis a resident of Richland County, South Carolina, therefore venue for this matter is proper pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended.
3. That based on the information provided to the Court, as well as the Doctor's Affidavits and Examiner's Reports submitted by Larry W. Nelson, M.D., Mary Beth Moore Sjobergis unable to make healthcare decisions for herself due to mental deficiency. Because of her condition, the Court finds that the appointment of a Temporary Guardian is necessary to ensure that Mary Beth Moore Sjoberg's healthcare needs are immediately provided for.
4. This Court has the authority to make an appointment of a temporary guardian pursuant to S.C. Code Ann. § 62-5-310, 1976, as amended. All of the requirements to make a temporary appointmentpursuant to S.C. Code Ann. § 62-5-310(A) have been met, including emergency preliminary findings that Mary Beth Moore Sjoberg is incapacitated made by Larry W. Nelson, M.D.and certified in writing to the Court, no guardian has been appointed previously, and the welfare of Mary Beth Moore Sjoberg requires immediate action. Accordingly, this Court finds that it is in Mary Beth Moore Sjoberg's best interest for Paula S. Saineto be appointed as her Temporary Guardian.
5. That based on a review of the Petitioner's criminal background checkand all other evidence available at this time, the Court concludes that Paula S. Saineis fit to serve as the Temporary Guardian, and should serve in that capacityfor a period not to exceed six (6) months.
6. That it would be in Mrs..Sjoberg's best interest for a Guardian *ad Litem* to be appointed as soon as possible.

THEREFORE, IT IS HEREBY ORDERED that:

A. Pursuant to S.C. Code Ann. § 62-5-310(A), 1976, as amended, Paula S. Saine is appointed as Temporary Guardian for Mary Beth Moore Sjoberg, with all powers and duties as set forth in S.C. Code Ann. § 62-5-312, 1976, as amended, or as granted by an order of this Court, to include but not limited to the authority to make decisions about medical care, psychiatric care, living arrangements, and health care for Mary Beth Moore Sjoberg. Mary Beth Moore Sjobergis to be as involved as much as possible in the health care decision making process.

B. The authority of the Temporary Guardian includes all powers as Personal Representative under HIPAA. All medical providers, physicians, nurses, psychiatrists, counselors, therapists, psychologists, insurance companies, and any and all other individuals or entities providing treatment, care or maintaining medical records for Mary Beth Moore Sjoberg, whether individually or jointly, shall provide the Temporary Guardian with information, copies, and access to all such information, and the Temporary Guardian shall not be prevented access to information pertaining to Mary Beth Moore Sjobergbased upon HIPAA regulations.

C. The appointment of Paula S. Saine as the Temporary Guardian for Mary Beth Moore Sjobergshall not exceed a period of six (6) months, and shall automatically terminate upon the appointment of a Permanent Guardian.

D. There shall be a status hearing scheduled for no more than forty (40) days from the date of this Order, and the Guardian *ad Litem* and the Temporary Guardian shall be prepared to give a preliminary report and updates, respectively, at that time.

IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

May 12, 2011
Columbia, South Carolina

TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by: Anne Marie Allum

RTT SJOBERG 000215

EXHIBIT J

FILED

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
11 MAY 16 PM 5:11
COUNTY OF RICHLAND)
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C
IN THE MATTER OF:)
Mary Beth Moore Sjoberg)
A Minor or An Alleged Incapacitated Person)
)
CASE NUMBER: 2011 GC40 00047 &)
2011 GC40 00048)

ORDER APPOINTING GUARDIAN *AD LITEM*

As a Petition has been filed in this Court that requires the appointment of a Guardian *ad Litem* (hereinafter "GAL") for the above-named minor or alleged incapacitated person (hereinafter, "the AIP"), I hereby appoint Annie Bea Hightower, Esq. as GAL.

As it is the role of the GAL to investigate and recommend to the Court what is in the best interest of the minor or AIP, I direct that the GAL shall have access to all reports, records, and information relevant to the minor or AIP in order to ascertain the facts. The GAL is authorized to have access to records prepared or related to any medical and psychological treatment of the minor/AIP and to discuss the child or AIP's medical and psychological treatment with any appropriate medical or health care professionals. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(i)(I), the Health Insurance Portability and Accountability Act (HIPPA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

To that end, the GAL's investigation shall include the following:

1) Review of relevant mental health records and materials of the minor/AIP;
2) Review of relevant medical records of the minor/AIP;
3) Interviews with the minor/AIP with and/or without other persons present; and
4) Interviews with relatives, mental health providers, caseworkers and other persons who have been involved in caring for or treating the minor/AIP;
5) Given the requirements stated in 42 C.F.R. Part II with regard to the release of information concerning drug or alcohol treatment, the Court will execute an additional order if it is necessary for the GAL to access such records for the minor/AIP.

To facilitate reasonable investigation of information pertaining to the minor/AIP, the GAL shall have access to the minor/AIP within fourteen (14) days of the date of this Order, and to all records and information, including authorization to speak with interested persons; including but

not limited to the following sources: the minor's parent or legal guardian, law enforcement agencies, health care providers, mental health care providers, residential care providers; other care providers, the Department of Social Services (if applicable), the Department of Mental Health, the Department of Health and Human Services (if applicable), schools, school officials, vocational rehabilitation centers (if applicable), and any financial institution in which it is believed that there are funds on deposit belonging to the minor/AIP (if applicable).

The GAL is also entitled to receive copies of any existing Will, Power of Attorney, Health Care Power of Attorney and/or Living Will executed by the AIP.

In that the person serving as a GAL acts as the Court's agent, he or she is entitled to quasi-judicial immunity for acts performed within the scope of his or her duties as the GAL.

THEREFORE, IT IS HEREBY ORDERED that Annie Bea Hightower, Esq. is appointed as GAL in this matter and the above directives of the Court are to be followed.

AND IT IS SO ORDERED.

Judge of Probate/Assoc. Judge of Probate or Clerk of Probate

May 16, 2011
Columbia, South Carolina

ACCEPTANCE OF APPOINTMENT

I ACCEPT THE APPOINTMENT: _____
(Signature)

Printed Name: A. Bea Hightower

Address: 2231 Devine Street
Suite 201 Columbia, SC 29205

Phone Number: 803-799-5205

E-mail: bea@edwardshightower.com

This 12 day of May, 2011

EXHIBIT K

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN RE: Mary Beth Moore Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Petitioner vs. Mary Beth Moore Sjoberg, an Alleged Incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine, Respondent	IN THE PROBATE COURT Case Nos.: 2011-GC-40-00047 & 2011-GC-40-00048 ORDER CONFIRMING ONGOING INCAPACITY and ORDER REGARDING MOTION TO STRIKE APPEARANCE OF COUNSEL

FILED
2011 DEC -2 PM 2:23
AMY W. McCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT pursuant to the appointment of Paula S. Saine ("Mrs. Saine") as Temporary Guardian and Temporary Conservator for her mother, Mary Beth Moore Sjoberg ("Mrs. Sjoberg"), an incapacitated adult. This matter was commenced on April 22, 2011, and Mrs. Saine was appointed in her temporary capacities on May 12, 2011. On October 18, 2011, counsel for the Temporary Guardian and Temporary Conservator filed a Notice of Motion and Motion to Strike Appearance of Counsel, Pope D. Johnson, III's ("Mr. Johnson") representation of Mary Beth Moore Sjoberg.

A hearing was held on October 26, 2011 on Petitioner's Motion to Strike the Appearance of Counsel regarding Mr. Johnson, who appeared in this matter on behalf of Mary Beth Moore Sjoberg on June 22, 2011. All interested parties either received or waived notice of the hearing. Present at the hearing were the Petitioner, Mrs. Paula S. Saine; Larry W. Nelson, M.D. psychiatrist of Mary Beth Moore Sjoberg ("Dr. Nelson"); Ms. Lori Sjoberg, daughter-in-law of Mrs. Sjoberg;

Ms. Delores Williams, friend and sitter for Mrs. Sjoberg; Ms. Essie Gause, sitter for Mrs. Sjoberg; attorneys for the Petitioner, Rita Bragg Cullum and Shaun C. Blake; the Court-appointed attorney and Guardian ad Litem for Mrs. Sjoberg, A. Bea Hightower; and Pope D. Johnson, III who asserts that he was retained by Mrs. Sjoberg.

The Court received the sworn expert testimony of Dr. Nelson, who testified that Mrs. Sjoberg has possessed a permanent incapacity since the date of his original Affidavit regarding capacity dated May 3, 2011 due to mental deficiencies, including mild dementia and very serious memory loss. Additionally, the Court received sworn testimony from Mr. Johnson, Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause regarding their interactions with Mrs. Sjoberg since June of 2011. No one other than Dr. Nelson was designated as an expert for the purpose of these proceedings. The Court also considered the previously submitted medical evaluation and report of Erik Crook, M.D., finding that Mary Beth Moore Sjoberg met the definition of an incapacitated person under S.C. Code Ann. §62-5-101(1), 1976, as amended, and that she is in need of care. Without objection, the report of William Brannon, M.D. ("Dr. Brannon") was also considered by the Court. The Guardian ad Litem, A. Bea Hightower ("Ms. Hightower"), thoroughly investigated all issues presented in this matter and stated that she agrees that Mrs. Sjoberg has remained an incapacitated adult since her initial assessment for these proceedings, and that Mrs. Sjoberg is in need of the care of a legal guardian.

Having reviewed the record and having heard the testimony at the hearing, this Court makes the following:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. This Court has subject matter jurisdiction over this case and personal jurisdiction over the parties, and venue is proper in this Court.

2. As a part of temporary proceedings, this Court found that Mrs. Sjoberg met the statutory definition of incapacity on May 9, 2011. Accordingly, this Court has previously adjudicated that Mrs. Sjoberg is "impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that [s]he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning [her] person or property." S.C. Code Ann. § 62-5-101(1), 1976, as amended.

3. Paula S. Saine was appointed by this Court on May 12, 2011, to act as both temporary Conservator and Guardian for Mary Beth Moore Sjoberg for a period of at least six (6) months. The temporary conservatorship and guardianship are still ongoing.

4. Mrs. Saine has never retained Mr. Johnson. On the contrary, Mrs. Saine's counsel has advised Mr. Johnson in writing and on Mrs. Saine's behalf, and pursuant to her power under S.C. Code Ann. § 62-5-312, 1976, as amended, that it is the position of the temporary conservator and guardian that Mr. Johnson has not been retained on behalf of Mrs. Sjoberg and that he should cease all work on behalf of Mrs. Sjoberg. Mr. Johnson has disregarded these instructions.

5. Mrs. Sjoberg did not initially approach Mr. Johnson to retain him as counsel. Rather, on June 22, 2011, Mr. Johnson was first contacted by Mrs. Sjoberg's former counsel, Mr. Robert J. Thomas, regarding the representation of Mrs. Sjoberg. At or around that time, Mr. Johnson was advised that Mrs. Sjoberg had already been adjudicated incompetent by this Court, that Mrs. Saine was the temporary guardian and conservator for Mrs. Sjoberg, and that Mrs. Hightower was acting as Guardian ad Litem for Mrs. Sjoberg.

6. Mr. Johnson does not have an attorney-client relationship with Mrs. Sjoberg that pre-dates this Court's ruling on her incapacity or the appointment of Mrs. Saine and Ms.

Hightower.

7. A copy of Mr. Johnson's Agreement to Provide Legal Services ("Retainer Agreement") with Mrs. Sjoberg is attached to the instant Motion. Mr. Johnson testified that he was not present on June 23, 2011 when Mrs. Sjoberg purportedly executed the Retainer Agreement. No party has challenged the fact that the signature on the Retainer Agreement is Mrs. Sjoberg's signature. However, no evidence was presented that Mrs. Sjoberg read the Retainer Agreement, received any explanation regarding the Retainer Agreement, or possessed any understanding of the Retainer Agreement at the time it was signed. Moreover, no evidence was presented regarding Mrs. Sjoberg's mental condition on June 23, 2011 besides Dr. Nelson, whose testimony establishes that Mrs. Sjoberg has remained impaired by reason of mental deficiency to the extent that she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning her person or property since May 3, 2011. The undersigned provides substantial weight to Dr. Nelson's testimony, which is supported by the conclusions of Dr. Crook and the weight of the lay testimony at the hearing. The undersigned gives greater weight to the opinions of Dr. Nelson and Dr. Crook due to their standing as the long-term treating physicians of Mrs. Sjoberg.

8. At that time of the execution of the Retainer Agreement, as a matter of law Mrs. Sjoberg had been adjudicated as a person who was incapacitated pursuant to the definition of incapacity in the State of South Carolina. Mrs. Sjoberg's lack the capacity included the absence of contractual capacity to enter into a contract for legal representation with Mr. Johnson, in exchange for Mr. Johnson's fees. Both Mr. Thomas and Mr. Johnson were aware of this Court's finding of incapacity regarding Mrs. Sjoberg.

9. Dr. Brannon's report failed to address contractual capacity. Rather, his analysis focuses on the lesser standard of testamentary capacity, which is not at issue in this motion.

10. Dr. Nelson's testimony establishes that Mrs. Sjoberg is able to mask at times the true extent of her impairment due to her education and experience as an English teacher. Additionally, Dr. Nelson's testimony demonstrates that Mrs. Sjoberg at times confabulates in order to fill gaps in her memory and understanding, and this practice further masks the extent of her deficiency to those who lack familiarity with the events or beliefs Mrs. Sjoberg describes.

11. Dr. Nelson's testimony establishes that Mrs. Sjoberg, although she may be capable of understanding an issue at the time it is explained to her, is highly susceptible to influence, suggestion, and leading questions by those who are around her at that instant. Mrs. Sjoberg picks up and responds to cues from those who are communicating with her. However, even in the course of the same day, Mrs. Sjoberg may lose recollection and understanding of earlier events, statements, and beliefs.

12. Dr. Nelson's testimony and the weight of the lay testimony at the hearing established that Mrs. Sjoberg can become acutely depressed when she is faced with her loss of independence. Specifically, the medical directive that prevents Mrs. Sjoberg from driving causes Mrs. Sjoberg much frustration, and she has confabulated events and otherwise placed blame on Mrs. Saine when faced with her inability to drive. Recently, Mrs. Sjoberg confabulated a theft of her vehicle by Mrs. Saine which never actually occurred, and she reported this confabulation to the police.

13. Dr. Nelson's testimony establishes that Mrs. Sjoberg, on more than one occasion, has demonstrated a failure to understand the nature of the legal proceedings that are taking place. Mrs. Sjoberg has also demonstrated a failure to understand who Mr. Johnson is or that he is acting as her counsel. Mrs. Sjoberg has often expressed the desire that the Petitioner, Mrs. Saine, be her caregiver and that she does not desire to oppose the current legal proceedings.

14. The testimony of Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause, as well as the statements of Ms. Hightower as Guardian ad Litem, support the conclusion that Mrs. Sjoberg does not know who Mr. Johnson is or that he is acting on her behalf as legal counsel. The testimony of these witnesses and the report of Ms. Hightower also demonstrate that Mrs. Sjoberg does not desire to oppose the current legal proceedings.

15. Mr. Johnson has testified that, when he is present with Mrs. Sjoberg, he believed that Mrs. Sjoberg has understood the attorney-client relationship between them and that she does not desire to have her social life controlled by Mrs. Saine. However, Mr. Johnson acknowledged that he lacks medical education to form the basis of any opinion regarding Mrs. Sjoberg's level of understanding. In light of Dr. Nelson's testimony, including his belief that those who communicate with Mrs. Sjoberg are not necessarily able to discern the underlying clinical difficulties she is experiencing, the Court gives greater weight to the body of evidence presented at the hearing that demonstrates that Mrs. Sjoberg has remained incapacitated within the meaning of S.C. Code Ann. § 62-5-101(1) since at least May 3, 2011 and that Mrs. Sjoberg has not possessed the ability to understand in a meaningful way the nature, scope and effect of her alleged engagement with Mr. Johnson during the time of the alleged engagement by Mr. Johnson. Gaddy v. Douglass, 359 S.C. 329, 345, 597 S.E.2d 12, 20 (Ct.App.2004); In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854, 857 (Ct.App.2001).

16. The Court finds and concludes that Mrs. Sjoberg has lacked contractual capacity at least since her assessment in May of 2011 and during the course of Mr. Johnson's alleged engagement with her, and that she continues to possess a permanent incapacity due to mental deficiency. Because Mrs. Sjoberg was previously adjudicated to be incapacitated prior to Mr. Johnson's involvement with her, and because of the absence of contractual capacity during the

course of his involvement with her, Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship.

17. As an additional ground in support of this ruling, the Court further finds that, as Mr. Johnson possessed knowledge of this Court's predetermination of incapacity and of Mrs. Sjoberg's mental incompetency, any contractual engagement between Mrs. Sjoberg and Mr. Johnson is void. Shepard v. First Am. Mortg. Co., 289 S.C. 516, 518, 347 S.E.2d 118, 119 (Ct. App. 1986).

18. However, based on the testimony provided by Mr. Johnson, the Court finds that Mr. Johnson has acted in good faith throughout his involvement in this matter and has attempted to pursue what he believes to be the best interests of Mrs. Sjoberg. The Court does not find that Mr. Johnson has intentionally violated any ethical obligation with respect to Mrs. Sjoberg. The Court further finds that Mr. Johnson should be paid for his services to Mrs. Sjoberg and authorizes Mr. Johnson to submit an affidavit and a detailed statement of costs and legal fees incurred during the time he has represented Mrs. Sjoberg, so that the Court can determine the fees and costs for which he is entitled to payment.

19. The Court further finds and concludes that Ms. Hightower should remain as Guardian ad Litem and continue in her responsibilities on behalf of Mrs. Sjoberg.

20. The Court finds that, because incapacity is no longer at issue, an attorney may not be needed for Mrs. Sjoberg. However, out of an abundance of caution, the Court finds that an attorney should be appointed to conduct an investigation into Mrs. Sjoberg's interests. If that attorney feels after investigation of the matter that Mrs. Sjoberg's interests are adequately protected solely with the appointment of the Guardian ad Litem and that his or her services are not needed to protect Mrs. Sjoberg, then that attorney will be relieved as counsel.

WHEREFORE, IT IS HEREBY ORDERED that:

A. Mary Beth Moore Sjoberg is an incapacitated adult pursuant to the definition in S.C. Code Ann. § 62-5-101(1), 1976, as amended, at she has been at least since this Court executed its Order on May 3, 2011. Therefore, a permanent guardian and conservator shall be appointed for Mrs. Sjoberg once mediation and any other necessary actions in this matter have been completed.

B. Mr. Johnson shall cease his representation of Mrs. Sjoberg, and his appearance as counsel of record shall be stricken from the docket.

C. An attorney shall be appointed for Mrs. Sjoberg to conduct an investigation into Mrs. Sjoberg's interests.

D. All Motions filed by Mr. Johnson that are currently pending shall be held in abeyance until reviewed by the attorney who is appointed to conduct an investigation into Mrs. Sjoberg's interests.

E. Mr. Johnson is entitled to submit an affidavit and detailed statement of the costs and legal fees incurred during his involvement with Mrs. Sjoberg, so that the Court may determine a reasonable award of attorneys' fees for his efforts on behalf of Mrs. Sjoberg.

F. The Guardian ad Litem, A. Bea Hightower, Esq. is entitled to a reasonable fee for the legal services provided to Mrs. Sjoberg in this matter, and once Ms. Hightower has submitted her invoice for review and approval by the Court a separate Order will be issued authorizing Mrs. Saine to pay this fee from the assets of Mary Beth Moore Sjoberg.

AND IT IS SO ORDERED.

Jacqueline D. Belton
Associate, Probate Judge

December 2, 2011
Columbia, South Carolina
Nunc Pro Tunc to October 29, 2011

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

EXHIBIT L

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	)	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 ORDER FOR RELEASE OF CLIENT DOCUMENTS

Seen 8/01/12
AJ

2012 JUL 31 PM 12:41
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER COMES BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

A conference regarding the status of the permanent Guardianship and Conservatorship appointments of Ms. Saine was held July 13, 2012, in chambers. Present at the status conference were Rita Bragg Cullum and A. Bea Hightower. At the status conference the Court discussed the payment of attorneys' fees and Guardian *ad Litem* fees, the estate planning documents of Ms. Sjoberg, and the status of the Guardianship and Conservatorship of Ms. Sjoberg going forward.

Ms. Saine is the Attorney-in-Fact for Ms. Sjoberg under a Healthcare Power of Attorney dated October 14, 2010, and a Durable Power of Attorney, although never recorded, executed by

Ms. Sjoberg. Ms. Saine was appointed as the Temporary Guardian and Temporary Conservator for Ms. Sjoberg by Order of this Court dated May 12, 2011. That this Court expects that Ms. Saine's temporary appointments will become permanent appointments.

That this Court is informed and believes that certain estate planning documents executed by Ms. Sjoberg are currently in possession of the law firm of Rogers, Townsend & Thomas, PC. That the attorney and Guardian *ad Litem* for Ms. Sjoberg informed the Court that she has contacted Robert J. Thomas, former long-time attorney for Ms. Sjoberg, and attorney Amy Landers May, both of Rogers, Townsend & Thomas, PC of this request. The attorney for Ms. Saine and the attorney and Guardian *ad Litem* of Ms. Sjoberg have requested that these certain estate planning documents and any and all documents pertaining to a rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, be turned over to Ms. Saine as the Temporary Guardian and Conservator for Ms. Sjoberg and that this Court authorize Rogers, Townsend & Thomas, PC to produce these certain documents. After considering the request of the attorney for Ms. Saine and the attorney and Guardian *ad Litem* for Ms. Sjoberg, the Court finds that the request is appropriate and that in order for the Temporary Guardian and Conservator to fulfill her fiduciary duties to her ward, it is in the best interests of Ms. Sjoberg for her Attorney-in-Fact and Temporary Guardian and Conservator to be in possession of her estate planning documents and the rental property agreement.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will

and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as the Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 31, 2012
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

RTT SJOBERG 000005

EXHIBIT M

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Case Numbers: 2011-GC-40-00047**
COUNTY OF RICHLAND	)	**2011-GC-40-00048**
IN THE MATTER OF MARY BETH SJOBERG	)	
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG,	)	**AMENDED ORDER FOR RELEASE OF CLIENT DOCUMENTS**
TEMPORARY GUARDIAN and CONSERVATOR.	)	

2012 AUG 24 PM 3:35
AMY [illegible]
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER CAME BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

An Order was issued by this Court on July 31, 2012 in which the law firm of Rogers, Townsend & Thomas, PC (hereinafter "RTT") was authorized to produce and release and was directed to immediately produce and release any and all estate planning documents, not just final or most recent versions, of estate planning documents executed by Mary Beth Sjoberg. The documents included, but were not limited to, Last Will and Testaments; trusts, revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy,

including copies in digital format or electronically stored. Reference is made to the July 31st Order for the background concerning this matter. The Order further required that whoever had actual possession of the requested documents, whether they were in the possession of RTT and/or attorney Robert J. Thomas, turn the documents over to Paula S. Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg

That this Court is informed and believes that some of the requested estate planning documents may have been turned over to Ms. Hightower, as attorney and Guardian *ad Litem* for Ms. Sjoberg, and/or to Paula Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg. However, the Court was copied on a letter sent by Mr. Thomas to Ms. Hightower which stated that some documents would be turned over, but expressed concerns about the general nature of the request and concerns about violating attorney-client privilege by turning over other materials from his files. Given that concern, this Court is amending its prior order to clarify what materials are being requested from the files of attorney Robert J. Thomas and/or RTT. Though some documents may have already been turned over by Mr. Thomas, for the sake of clarity this Amended Order will restate all of the documents that are stated in the previous order and will further clarify to whom remaining documents are to be given.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all actual estate planning documents, not just final or most recent versions of those estate planning documents executed by Mary Beth Sjoberg, including, but not limited to: Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and

business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

August 24, 2012
Columbia, South Carolina
Nunc Pro Tunc to July 31, 2012

EXHIBIT N

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case Nos. 2011-GC-40-00047
2011-GC-40-00048

FILED
AUG 30 '12
RICHLAND COUNTY PROBATE COURT

EX PARTE ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

MOTION TO RECONSIDER
AND
CLAIM OF PRIVILEGE
PENDING REVIEW OF THE COURT'S FILE

TO THE COURT AND TO COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the Court, Rogers Townsend & Thomas, PC and Robert J. Thomas (collectively the "Firm") will move the Court to reconsider its Order of July 31, 2012, its Amended Order of August 24, 2012 (collectively the "Production Orders"), and its oral order declining to allow the Firm to review the Court's file in this case.[1] This motion is based on the grounds that the Firm has been denied access to the Court's records so that the Firm can:

a) determine whether the Production Orders are lawful; and

b) determine the scope of the rights and powers of those to whom the production is commanded.

Pending access to the Court's records, due to the work product doctrine and the attorney-client privilege, the Firm is informed and believes, and respectfully asserts, that the

[1] The Firm received written notice of entry of the first Production Order on August 21, 2012. The Firm waives its right to receive a written order denying it access to the Court's file. And the Firm waives any right to written notice of entry of the Second Production Order.

South Carolina Rules of Professional Conduct prohibit it from complying with the Production Orders.

Specifically, the Production Orders require the Firm to produce documents that would be, but for the apparent appointment of Paula S. Saine as Temporary Guardian and Conservator of Mary Beth Sjoberg and A. Bea Hightower as attorney and Guardian ad Litem for Ms. Sjoberg, protected by the work product doctrine and the attorney-client privilege. (We will refer to the Order or Orders we assume to exist that apparently appoint Ms. Saine and Ms. Hightower to their positions as the "Appointment Orders.") Nothing could be more sensitive and confidential than a living person's will and estate planning documents unless it is the living person's lawyer's draft work papers.

Exceedingly mindful of the duty of confidentiality created by Rule 1.6(a) of the South Carolina Rules of Professional Conduct, and also mindful of the distrust between Ms. Sjoberg and Ms. Saine that existed when the Court apparently entered, *ex parte*, one or more of the Appointment Orders, the Firm has determined, in good faith, that it cannot blindly assume that the Production Orders are lawful and proper in scope. But the Firm's request to see the Court's file to make that determination was denied.

Hence, before the Firm will exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to reveal the requested information, the Firm asks to review the Court's file so that the Firm can make an independent evaluation as to whether the Court had jurisdiction to enter the Orders and to verify the existence, legality, scope, and extent of the Appointment Orders. Once the Firm has verified that the Amended Production Order is lawful, the Firm will comply with that Order.

The Firm waives the lack of service of a subpoena or summons on it, but the Firm expressly reserves all objections to having been denied timely notice and a fair hearing related to the Production Orders.

All of which is respectfully submitted.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

August 30, 2012.

RTT SJOBERG 000988

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, the undersigned employee, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on August 30, 2012at the following addresses:

Document Served:

Motion to Reconsider and Claim of Privilege Pending Review of the Court's File

Counsel Served:

Annie B. Hightower, Esquire
Aiken & Hightower
1634 Main Street, Suite 200
Columbia, SC 29201

Rita Bragg Cullum
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

The Honorable Jacqueline D. Belton
Associate Probate Judge
51701 Main Street
2nd Floor Suite 207
Columbia, SC 29201

Bonnie Faye Kirkland, Litigation Assistant

EXHIBIT O

FILED
2014 MAY 16 PM 4:29
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

AFFIDAVIT OF ROBERT P. WOOD, ESQ.

PERSONALLY APPEARED before me Robert P. Wood, Esq., who, being first duly sworn, deposes and says that the following facts are true:

1. I have been a member of the South Carolina Bar since 1980 and a shareholder in the law firm Rogers Townsend & Thomas, PC for some time.

2. I am also a member of the Virgin Islands Bar Association, the American Board of Trial Advocates, the Richland County Bar Association, the South Carolina Bankruptcy Law Association, the American Bar Association, and the John Belton O'Neall Inn of Court.

3. I am listed in the Best Lawyers in America, Super Lawyers for Business Litigation and Midlands Legal Elite.

4. Following this Court's Order for Release of Client Documents of July 31, 2012, I became involved in this action on behalf of Bob Thomas and the firm and represented them both until the appeal was dismissed as being moot. As a result, I am knowledgeable about the facts

and circumstances underlying the Petitioner's Motion for Sanctions, including the facts and matters stated herein.

5. After the firm was notified that the Court had issued an order on July 31, 2012, requiring it to turn over to Ms. Saine the estate planning documents of Ms. Sjoberg, the firm communicated with the Court that the firm be allowed to examine the Court's file prior to producing documents. The Court verbally denied the request.

6. After having received various documents from the Court on October 18, 2012, the Court notified the firm on the afternoon of October 24, 2012, that it had until October 26, 2012, to file a supplemental brief related to the firm's motion asking the Court to reconsider its Order of July 31, 2012, and its Amended Order of August 24, 2012.

7. The Court denied the firm's Motion for Reconsideration on December 4, 2012, making the deadline for all post-trial motions due on or before December 14, 2012.

8. Between lawyers and paralegals, the firm expended 183.42 hours towards examining and analyzing the issues and conflicts presented by the firm's ethical obligations to its client in the face of an order of the Court. Ms. Sjoberg was never charged for any of the firm's time in dealing with these matters.

9. Attached as Exhibit 1 is a true and accurate copy of an email I received from Judge Jacqueline Belton dated September 6, 2012. RTT 718

10. Attached as Exhibit 2 is a true and accurate copy of an email I received from Judge Jacqueline Belton dated September 10, 2012. RTT 719-721

11. Attached as Exhibit 3 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 3:08 pm. RTT 722-725

12. Attached as Exhibit 4 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 4:11 pm. RTT 726

13. Attached as Exhibit 5 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 4:43 pm. RTT 727

14. Attached as Exhibit 6 is a true and accurate copy of an email to I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 6:36 pm. RTT 734

15. Attached as Exhibit 7 is a true and accurate copy of an email exchange between myself and Judge Jacqueline Belton, including an email from me to Judge Belton dated September 14, 2012 at 5:26 pm and an email in response from Judge Belton to me dated September 14, 2012 at 5:58 pm. RTT 735-736

16. Attached as Exhibit 8 is a true and accurate copy of the Memorandum in Support of Motion to Reconsider filed in the Probate Court on September 17, 2012. RTT 598-606.

FURTHER AFFIANT SAYETH NOT.

Robert P. Wood

SWORN and subscribed to before me
this 15th day of May, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 01-22-2018

EXHIBIT 1

Wood Exhibits

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 06, 2012 9:42 AM
To:	Robert P. Wood; Amy Landers May
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject:	Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048
Attachments:	KMBT20020120905170144.pdf

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

EXHIBIT 2

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
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Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May

Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
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The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

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Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonJ@rcgov.us

NOTICES
PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 803-771-7900 (Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT 3

Robert P. Wood

From:	Robert P. Wood
Sent:	Thursday, September 13, 2012 3:08 PM
To:	Jonathan Spitz; KIM LEWIS
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; 'JACQUELINE BELTON'
Subject:	RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

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Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz

Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

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confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

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attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT 4

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:11 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

I would also like to see the notice of the hearing held on May 9 and proof of service of that notice.

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

EXHIBIT 5

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:43 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

Please also send me (or make available to me) any pleadings, motions, reports, or briefs filed by Mike Polk.
Thanks.
Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr
Columbia, SC 29210

Direct 803.744.1273
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

RTT SJOBERG 000727

ROA000394

EXHIBIT 6

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 6:36 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Cc: JACQUELINE BELTON (BELTONJ@rcgov.us)
Subject: Sjoberg

Could you also scan and email to me:

The report by the visitor who went to Ms. Sjoberg's residence.

I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send me that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

EXHIBIT 7

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Friday, September 14, 2012 5:58 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS; mike@belserpa.com
Subject: RE: Sjoberg

Dear Mr. Wood:
Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

Thanks and have a good weekend.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Friday, September 14, 2012 5:26 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS
Subject: Sjoberg

Judge Belton: I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday.

If you are pressed for time, the main things I'd like to see as soon as possible are

the affidavit of service of the summonses and petitions on Mrs. Sjoberg;
the affidavit of service of the notice of the 5/9/11 hearing; and
evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally.

All these go, of course, to whether the court had personal jurisdiction over Ms. Sjoberg and whether she was afforded timely notice and an opportunity to be heard before entry of the appointment orders that resulted in the order requiring our firm to turn over material that we feel is covered by the attorney-client privilege and the work product doctrine.

But I would still like to see the other documents when you can get to them. I have, by the way, now seen Dr. Nelson's report.

Thanks.

Bob Wood

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

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Fax 803.343.7017

Main 803.771.7900
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EXHIBIT 8

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE PROBATE COURT Case Nos. 2011-GC-40-00047 2011-GC-40-00048
EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.	MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

TO THE COURT AND TO COUNSEL OF RECORD:

Robert J. Thomas and the law firm of Rogers Townsend & Thomas, PC (the "Firm") respectfully ask the Court to reconsider its Order of July 31, 2012, its Amended Order of August 24, 2012 (collectively the "Production Orders"), and its oral order declining to allow the Firm to review the entire Probate Court file in these cases.

Procedural Background

On July 31, 2012, this Court entered an order requiring South Carolina attorney Robert J. Thomas and the Firm to produce wills, powers of attorney, and similar documents, including drafts of them, belonging to Mary Beth Sjoberg to the Court. On August 24, the Court amended the order somewhat. Thereafter, Amy Landers May (an attorney in the Firm) asked the Court to allow her to review the court's entire file. The Court declined (citing its standard policy) but produced specific documents it felt relevant to the situation.

Mr. Thomas and the Firm thereafter filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Court's file. The Firm

stated that before it would exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to produce the requested documents, it would make an independent evaluation as to whether the Court was authorized to enter the Orders, and it would make an independent evaluation as to the existence, legality, scope, and extent of the orders appointing Paula Sjoberg Saine as Temporary Guardian and Conservator and appointing Bea Hightower as Guardian ad Litem.[1] The Firm has completed its evaluation and respectfully reports that it is not convinced the Court was authorized to enter the Production Orders, and the Firm is not convinced that the Production Orders allow it to reveal information otherwise protected by the attorney-client privilege or the work product doctrine.

The Court set a deadline of Friday, September 14, to file this brief but extended the deadline until today. Thereafter the Court sent an email to Mr. Thomas and the Firm reading in part:

> [I]f the basis for not turning over the original Will to the Court is the jurisdictional issues [raised by the Firm], then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.
>
> Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-

[1] Such an inquiry is required by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law").

mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.[2]

The Court has not opened its file to the Firm and has not produced any of the specific documents requested by the Firm. Of particular significance to the Firm are the affidavit of service of the summonses and petitions on Mrs. Sjoberg; the affidavit of service of the notice of the May 9, 2011, hearing; and evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally. But the Firm also requested (and has not received) copies of the summonses and petitions in these cases; any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf; the notice of the hearing held on May 9; any pleadings, motions, reports, or briefs filed by Attorney Mike Polk; the report (if any) by a visitor who might have gone to Ms. Sjoberg's residence as required by law; any order indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced; the order directing Attorney Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney; and the reports of Dr. Nelson and Dr. Brannon.

Analysis

We will start with the Court's email of 5:58 PM on Friday, September 14, 2012.

In that email the Court did not state how Mr. Johnson's failure to raise certain issues mattered since the Court had previously found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed

[2] Out of an abundance of caution, we are treating this email as a court order because we assume the Court meant what it said.

and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

As to Attorney Polk's involvement, the Firm has not been provided a copy of the Court's file so it can see whether Mr. Polk even considered the jurisdictional and due process issues we are raising here. Furthermore, the Order appointing Mr. Polk did not give him authority to waive any of Ms. Sjoberg's rights, including the right to challenge jurisdiction, to waive due process, or to waive the attorney-client privilege or the benefits of the work product doctrine.

Now we will move to the merits of the motion.[3]

Robert J. Thomas has known Mary Beth Moore Sjoberg since 1952. Mr. Thomas has served as her attorney since the death of her husband several years ago (with one exception, when the firm of Ellis Lawhorne & Sims represented her by reviewing her estate planning documents and drafted a healthcare power of attorney for her[4]). Mr. Thomas has drafted numerous estate planning documents for her. More recently, Mr. Thomas helped Ms. Sjoberg create her present estate plan and helped her with her many conflicts with Paula Sjoberg Saine (her daughter). In the course of that representation, Mr. Thomas learned information about Ms. Sjoberg of a highly confidential manner. Due to the attorney-client privilege and work product doctrine, Mr. Thomas believes that Ms. Sjoberg fully expected this information to remain confidential and private, and Mr. Thomas expected to keep it that way.

---

[3] Most of the following facts are found in the so-far unsigned Affidavit of Robert J. Thomas (attested to be accurate by the Affidavit of Robert P. Wood due to Mr. Thomas's inability to execute an affidavit today).

[4] Whether that creates a conflict of interest is beyond the scope of this brief.

Paula has long known that Mr. Thomas represented Ms. Sjoberg regarding Ms. Sjoberg's estate planning issues and regarding the many disputes between Paula and Ms. Sjoberg. And Paula knew that when, in early May, 2011, she filed summonses and petitions seeking her appointment as guardian and conservator for Ms. Sjoberg.

Pursuant to SCRCP Rule 4(d)(2), the summonses and petitions had to be served on Ms. Sjoberg personally. The Court has declined to allow us to see any proof of service of the summons on Ms. Sjoberg personally as required. We do not believe they were served on Ms. Sjoberg personally and have not seen any evidence that they were. Until we see proof that the summonses and petitions were served on Ms. Sjoberg personally, we cannot presume that the Court has, or ever has had, personal jurisdiction over Ms. Sjoberg. Hence, any order requiring Mr. Thomas or the Firm to do anything is void.

Ms. Sjoberg was also entitled to be served personally with notice of the hearing whereby Paula sought to have herself appointed Guardian and Conservator for Ms. Sjoberg, and Ms. Sjoberg was entitled to be present at the hearing in person. See S.C. Code §§ 62-5-303 (a) and (b) (appointment of a Guardian) and 62-5-407 (a) and (b) (Conservator). See also S.C. Code § 62-1-401 requiring notices be given to interested parties (of which Mr. Thomas was one). Nothing in the file shows that Ms. Sjoberg was personally served with notice of the hearing or given notice of a chance to attend it in person. When the Court appointed a guardian and conservator (and froze Ms. Sjoberg's bank accounts) without having had personal jurisdiction over Ms. Sjoberg and without having afforded her notice and an opportunity to be heard, the Court denied Ms. Sjoberg due process of the law, and the ensuing orders were simply not authorized.

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...
>
> Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

With all due respect to the Court, the Firm has decided it will not honor any order where the Court that issued it does not have jurisdiction and has denied the Firm's client due process.

Also, when this suit was commenced, Ms. Sjoberg was entitled to counsel of her choice. Mr. Thomas was Ms. Sjoberg's choice. S.C. Code §§ 62-5-303(b) and 62-5-407(b) provide that: "unless the person to be protected has counsel of his own choice, [the court] shall appoint an attorney." Section 407(b) goes further, stating that if the person "already has representation by an attorney that attorney shall act as his guardian ad litem."

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court reversed an order disqualifying a party's attorney and held that the order was immediately

appealable because an individual has the "right to be represented by an attorney of ones choosing," which is a substantial right.

Paula did not help the situation. She and her counsel knew that Mr. Thomas represented Ms. Sjoberg. Yet Paula failed to so notify the Court and proceeded as if she did not know of Mr. Thomas's existence.

Privileges

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). The attorney-client privilege is strong enough to survive death. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. "The acts of a court without jurisdiction" however "are without effect." DeWitt v. S. Carolina Dept. of Highways & Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980). Furthermore, as noted above, an attorney ordered to reveal information protected by the attorney-client privileged is required to assert on behalf of the client all nonfrivolous claims that a court order is not authorized. Cmt. 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

Review of Court's File

Finally, we respectfully request that the Court reconsider its order denying the Firm an opportunity to review its entire file.[5] "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and [Art. I § 9 of] the state constitution." Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). Mr. Thomas and the Firm have no right or duty to reveal privileged documents and information absent an authorized court order, and they are entitled to question the authority of this Court to enter such an order. Nothing could be more sensitive and confidential than a living person's will and estate planning documents. Mr. Thomas and the Firm owe all of their current and former clients the duty to protect their confidential information from parties occupying potentially adverse positions.

Conclusion

Robert J. Thomas and Rogers Townsend & Thomas, PC respectfully ask the Court to reconsider its orders requiring them to produce Ms. Sjoberg's estate planning documents and other confidential information, and they ask the Court to reconsider their request to see the Court's file related to these proceedings.

---

[5] The Court's 6 PM email reads in part, "We can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised.... Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon." The Court did not extend the Firm's deadline for filing this brief.

All of which is respectfully submitted.

s/ Robert P. Wood

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September ___, 2012.

EXHIBIT O(1)

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 13, 2012 4:58 PM
To:	Robert P. Wood; Jonathan Spitz; KIM LEWIS
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May
Subject:	RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
I just got out of a long hearing. There will be no problem with you receiving the documents you requested. The quickest way to get them to you would be to scan and e-mail them, if that works for you. However, as that can't be done until tomorrow I can give you until next Monday to get your response to me, if needed.

Please let us know if that works for you.

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Thursday, September 13, 2012 3:08 PM
To: Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; JACQUELINE BELTON
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
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Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,

Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to

examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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(Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

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for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (I) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (II) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT P

FILED
12 OCT 18 AM 9:51
RICHLAND CO. CLERK OF COURT, S.C.
BY: [illegible]
DEPUTY

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	Case No. 2011-GC-40-00047
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00048
IN THE MATTER OF: MARY BETH MOORE SJOBERG,	)	
PAULS S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	)	**ORDER RELEASING DOCUMENTS AND PROTECTIVE ORDER**
Petitioner.	)	

Attorney Robert P. Wood of Rogers Townsend & Thomas P.C. (RTT) has requested, via email, a number of documents from the files in the referenced actions. Neither Mr. Wood nor RTT is counsel of record for any party to this action[1]. After consultation with counsel of record, this Court exercised its discretion to release certain file materials to Mr. Wood, which were receipted by Mr. Wood on September 25, 2012.

The probate courts of this State are required to maintain records regarding proceedings involved protected persons and are required to furnish copies of "any other record or paper filed or recorded." S.C.Code Ann. Section 62-1-305 (2009)[2], 1976, as amended. Probate courts are courts of record. Section 14-23-1120. Copies of documents from probate court files of protected persons may be released to individuals on request. Section 14-23-620[3].

[1] Robert J. Thomas, a member of RTT, previously represented Mary Beth Moore Sjoberg in connection with estate planning and other matters, before she was determined to lack capacity. RTT has not filed any pleading with this Court requesting that a determination be made that it is an interested party in this matter.

[2] There are multiple provisions of the South Carolina Code that address the handling of probate court files. *See* 14-23-620 and compare 62-1-305.

[3] Many of the older provisions of Title 14, Chapter 23 have been repealed by subsequent legislative acts. *See e.g.*, former Section 14-23-610, repealed by 1991 Act No. 85, Section 1, effective May 23, 1991; former Section 14-23-650, repealed by 1997 Act No. 152, Section 31, effective June 11, 1997. The Code Commissioner has noted several other provisions as being repealed by implication from subsequent legislative acts. *See* former Sections 16-

However, many of the documents maintained in the Court's files in guardianship and conservatorship matters are of a private, personal and sensitive nature, the public disclosure of which could reveal confidential medical information or private financial information that if released could be harmful to the protected person or subject him to exploitation. The Court believes it has an obligation, based on the duties imposed upon it by the Probate Code, to make an individual examination when documents are requested by non-parties to the action and to exercise its discretion to determine whether the requested documents may be released and, if so, under what circumstances and with what protections, if any, attached to the disclosure. *See Bellamy v. Brown*, 305 S.C. 291, 408 S.E.2d 219 (1991).

Even the S.C. Freedom of Information Act (FOIA), S. C. Code Ann. Section 30-4-10, et seq., 1976, as amended, which mandates the disclosure of anything determined to be a public record, recognizes that there are certain records, including certain medical records, medical reports, and financial records that are exempt from disclosure. Section 30-4-20(c). In addition, FOIA specifically addresses matters exempt from disclosure, and states that a public body may, but is not required to disclose "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." See Section 30-4-40(a)(2). Therefore, the fact that a document is contained in a file maintained by a court does not necessarily make it a public record, available to disclosure to persons not involved in the matter. Section 30-4-20(c). Section 62-1-103 makes clear that principals of law and equity that are not displaced by Title 62 of the South Carolina Code remain applicable to probate court proceedings. Thus, a determination of whether certain documents contained in the files of protected persons is within the discretion of this Court.

23-630 and 640, noted as "repealed by implication by 1976 Act No. 690, Article V, Section 13." It appears that Section 14-23-620 remains a valid code section.

The Court takes note of the fact that the S. C. Supreme Court has expressed concern about the content of court files, noting that "the ready availability of these documents raises significant privacy concerns." 2007-AO-0813 (Administrative Order August 13, 2007). For that reason, the Supreme Court has ruled that documents that may be of record at the trial court must be redacted before they are filed with an appellate court in order to protect personal information of litigants. *Id*

The very nature of the files maintained in protective proceedings requires that the Court make an *ad hoc* review of the documents requested by non-parties, including an analysis of the protected persons' right to privacy and the risk of possible harm that may be caused by unqualified release of certain documents regarding a protected person from the court file. The General Assembly has specifically tasked all public entities with the obligation to jealously guard the release of confidential information from its files. S.C.Code Ann. Section 30-2-300 – 330.

An examination of the open records statute applying to the probate courts in this state, FOIA, and the S. C. Supreme Court's Administrative Order make it clear that it is necessary to strike a balance in considering requests for the release of documents from a probate court file. Accordingly, this Court has a process in place for review by the Court of requests by non-parties for the release of documents from guardianship and conservator files. Non-parties are required to fill out a request form setting forth what documents they are requesting from a file and, in every case, a probate court judge makes an individual determination whether the requested materials will be released to the requesting non-party. This Court is unaware of any appellate court reviewing the process employed by this Court, or of any administrative determination by the Supreme Court or South Carolina Court Administration that finds this Court's process invalid in any way.

In determining to release certain materials to Mr. Wood, the Court made a review of the contents of both files in these matters, and consulted with the parties to this action. After consultation with the parties, who objected to the release of medical and financial information in the file, and exercising its independent discretion and duty, the Court determined that release of certain file materials to Mr. Wood and RTT could be made. In so doing, the Court considered the continuing obligation of confidentiality owed by Mr. Wood and RTT to its former client, Mary Beth Moore Sjoberg. The Court did not release certain materials contained within the Court's files.

This Order is issued to establish the basis for the Court's decision to withhold certain confidential information from disclosure to Mr. Wood and RTT. Served upon Mr. Wood and RTT, with a copy of this order, is a CD containing electronic copies of all materials contained within the subject files that this Court has determined, in its discretion, may be disclosed to them. Copies of the CD are being provided to the parties to this action, including the duly-appointed attorney and guardian *ad litem* for Mary Beth Moore Sjoberg.

In releasing these documents to Mr. Wood and RTT, the Court reminds Mr. Wood and RTT that these documents are released to them in their capacity as former counsel for the protected person, and the documents are therefore confidential, such that disclosure of the documents or information contained therein is governed by applicable rules regarding the attorney-client relationship and client confidentiality. The documents may not be used for any purpose other than furthering the interests of the protected person, their former client.

This Order is issued this date *nunc pro tunc* to September 25, 2012.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

October 18, 2012
Columbia, South Carolina

Nunc pro tunc to September 25, 2012

RTT SJOBERG 000611

EXHIBIT Q

FILED

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AMY LANDERS MAY
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case Nos. 2011-GC-40-00047
2011-GC-40-00048

EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC

IN THE MATTER OF MARY BETH SJOBERG

PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.

SECOND MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER

TO THE COURT AND TO COUNSEL OF RECORD:

On October 18, 2012, the Court furnished Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively the "Firm") with a complete copy of its file (less documents not requested by the Firm) and certified the completeness of the file. On the afternoon of October 24, 2012, the Court notified the Firm that it had until October 26, 2012, to file a supplemental brief related to the Firm's motion asking the Court to reconsider its Order of July 31, 2012, and its Amended Order of August 24, 2012 (collectively the "Production Orders"). We therefore submit this brief.

Procedural Background

On July 31, 2012, this Court entered an order requiring South Carolina attorney Robert J. Thomas and the Firm to produce wills, powers of attorney, and similar documents, including drafts of them, belonging to Mary Beth Sjoberg to the Court. On August 24, the Court amended the order somewhat. Thereafter, Amy Landers May (an attorney in the Firm) asked the Court to

allow her to review the court's file. Aff. of Amy May, ¶ 2. The Court declined (citing its standard policy) but produced specific documents it felt relevant to the situation.

Mr. Thomas and the Firm thereafter filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Court's file. The Firm stated that before it would exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to produce the requested documents, it would make an independent evaluation as to whether the Court was authorized to enter the Orders, and it would make an independent evaluation as to the existence, legality, scope, and extent of the orders appointing Paula Sjoberg Saine as Temporary Guardian and Conservator and appointing Bea Hightower as Guardian ad Litem.[1] The Firm has completed its evaluation and respectfully reports that it is still not convinced the Court was authorized to enter the Production Orders, and the Firm is not convinced that the Production Orders allow it to reveal information otherwise protected by the attorney-client privilege or the work product doctrine.

Argument

1. The Court Does not have Personal Jurisdiction over Ms. Sjoberg

a. Ms. Sjoberg was never served with the summonses and petitions.

A review of the file shows that Ms. Sjoberg was never personally served with the summons and petitions in these cases. The alleged incompetent person must be personally served. SC Code § 62-5-405 provides:

[1] Such an inquiry is required by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law").

(a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition.

Service is jurisdictional:

After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and....

No statute or rule we have found allows substitute service or service on an attorney-in-fact. See also Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which provides in relevant part:

(d) Summons: Personal Service. ... Service [of a summons and complaint] shall be made as follows:

(d)(2) Minors, Incompetents and Persons Confined. Upon ... an incompetent person by delivering a copy of the summons and complaint to such ... incompetent personally. ...

b. Paula Saine's supposed consent to the relief sought in the summonses and petitions is invalid.

If Ms. Saine claims she held a power of attorney authorizing her to accept service, we have not seen it. The copy of the power of attorney we have seen does not give Ms. Saine the power to accept service of a lawsuit or to defend one. Exhibit A. And, at any rate, the copy of the power of attorney we have seen was revoked long before Ms. Saine purported to use it to accept service. Id.

c. Ms. Sjoberg was never given notice of the hearing that resulted in the appointment of a conservator.

First, nothing in the Court's file shows that Ms. Sjoberg was ever sent notice of a hearing for appointment of a conservator as required by S.C. Code § 62-5-401 (providing that upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator).

Secondly, we point out that SC Code § 62-5-405 requires notice of a petition for appointment of a conservator to be given to "interested persons." Mr. Thomas was certainly an interested person, and counsel for Ms. Saine knew it. See Aff. of Robert J. Thomas, ¶¶ 9 – 11.

Finally, we point out that SC Code § 62-5-407 provides:

> (b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem.

Counsel for Ms. Saine knew that Mr. Thomas was representing Ms. Sjoberg yet allowed the petition to move forward without his knowledge until he finally learned on Saturday, May 14, 2012, about the proceedings (which had been going on since April 22, 2011). Thomas Aff. ¶ 11.

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court reversed an order disqualifying a party's attorney and held that the order the "right to be represented by an attorney of ones choosing" is a substantial right.

c. Ms. Sjoberg has not waived service or notice of the hearing.

The Court expressed in an email its belief that Attorney Pope Johnson waived service of the summons and petition and waived notice of the hearing by serving an answer that did not reserve those defenses and by not raising them at the hearing he attended. However, the Court also found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

We seem to recall the Court expressing concerns over the fact that it appointed Attorney Michael Polk to review the file. The order appointing Mr. Polk, however, did not order or even authorize him to check into issues of jurisdiction (personal or subject-matter), and when we interviewed him he said he did not check into those matters. Our review of the court's file does not reveal any document submitted by Mr. Polk where he says he checked into jurisdictional matters.

Finally in this regard, we note that waiver of notice of the hearing by the person to be protected is not effective unless she attends the hearing (which nothing in the Court's file

shows she did) or unless her attorney gives notice of the waiver (which nobody did). SC Code § 62-5-405(b).

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Finally, as a matter of common sense, we urge the Court to think about what happened here. At 3:55 PM on Friday, April 22, 2011, while Ms. Sjoberg was out of town, Paula Saine's lawyer carried papers to the Richland County Probate Court for filing. Those papers contained a petition that the Court appoint a conservator for an allegedly incompetent person, and they contained a consent to that relief signed by the very person who was petitioning for that relief. As a result, without any sort of notice, Ms. Sjoberg found that her assets had been frozen and taken from her. We submit that neither the South Carolina General Assembly nor society in general will tolerate this sort of conduct. There are reasons why a summons and petition and a hearing notice need to be served on an allegedly incompetent person personally.

2. The Court Does not have Subject-matter Jurisdiction to Order the Turnover of a Will

Despite a good bit of effort, we have not been able to find any statute or case that gives a probate court (a court of limited jurisdiction) the subject-matter jurisdiction to order the

production of a living person's will except possibly the narrow grant of authority to probate courts under SC Code § 62-5-408. In that statute, the South Carolina General Assembly has seen to it that, with the help of a court with jurisdiction, the court can examine a living person's will if the one asking the court to see it jumps through specific hoops in the right order at the right time.

Here, though, a review of the Court's file shows that Ms. Saine has not followed the statutory scheme to obtain a court order that would force or authorize the Firm to turn over Ms. Sjoberg's estate planning documents.

Section 62-5-408 is long and not easy to follow, so we urge the Court to get out its own copy of the statute and study it carefully.

We start with an overview of the statute:

Section (1) provides that while a petition for appointment of a conservator is pending and after a preliminary hearing of which the protected person had notice, the court may do things with the protected person's property if the petition asks the court for temporary relief. If the court takes the actions requested of it, then it must give notice of its actions to "interested parties" as soon as practicable thereafter.

Section (3)(a) then provides that after a hearing and determination that a conservator needs to be appointed for the protected person, the court, for the benefit of the protected person and the estate, has all the powers over the protected person's estate that she could exercise if she were not under a disability (such as incompetence), except to make a will.

Section (3) then lays out all the various powers the court can exercise so long as, pursuant to Section (3)(b), in the petition seeking that specific relief, the incapacitated person

and her known heirs and her devisees, and her donees, and her beneficiaries are made parties to the action and so long as the petition alleges that the incapacitated person is incapable of consenting to this relief.

Only then, pursuant to Section (3)(c), may the Court consider the protected person's estate plan.

We will address this section by section.

Section (1) envisions a petition separate from the petition for appointment of a conservator ("While a petition for appointment of a conservator ... is pending."). Even if not, Ms. Sjoberg did not get notice of any such petition and did not get notice of any such hearing (as discussed above).

Next, whatever the Court does with this power is limited to actions that are for the protected person's "benefit or the benefit of her dependents." There has been absolutely no showing that an order requiring the production of estate planning documents will benefit Ms. Sjoberg. And she has no dependents.

As to Section (3)(b), there is no allegation in the petition for appointment of a conservator (assuming that petition can be the vehicle for this sort of relief) that Ms. Saine is asking for the specific relief of reviewing or amending Ms. Sjoberg's estate plan (which would be the only reason for it to be revealed). And, again, we do not see how amending Ms. Sjoberg's estate plan would benefit Ms. Sjoberg, and we imagine that is why Ms. Saine did not ask for that specific relief. So we would imagine that even if Ms. Saine were to file such a petition seeking the specific relief of reviewing or amending her mother's estate plan, the petition would be denied.

3. Privileges

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). The attorney-client privilege is strong enough to survive death. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. "The acts of a court without jurisdiction" however "are without effect." DeWitt v. S. Carolina Dept. of Highways & Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980). Furthermore, as noted above, an attorney ordered to reveal information protected by the attorney-client privileged is required to assert on behalf of the client all nonfrivolous claims that a court order is not authorized. Cmt. 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

Conclusion

Robert J. Thomas and Rogers Townsend & Thomas, PC respectfully ask the Court to reconsider its orders requiring them to produce Ms. Sjoberg's estate planning documents and other confidential information. Specifically, they ask the Court to recognize that it does not have personal jurisdiction over Ms. Sjoberg and it does not have subject-matter jurisdiction to over the Firm to turn over Ms. Sjoberg's estate planning documents.

All of which is respectfully submitted.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

October 26, 2012.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

REVOCATION OF *DURABLE* POWER OF ATTORNEY DATED JUNE 23, 2007

KNOW ALL MEN BY THESE PRESENTS that I, Mary Beth Sjoberg, do hereby revoke, cancel and repudiate the *Durable Power of Attorney* wherein I appointed Paula S. Saine as my attorney in fact, which was signed and sworn to on June 23, 2007, in the County of Richland, State of South Carolina, and which may or may not have been filed for record in the Office of the Register of Deeds for Richland County, South Carolina.

WHEREFORE, having revoked my Power of Attorney referred to above, I do hereby request that it be stricken from the records of Richland County, South Carolina, such that it shall be null and void with no validity whatsoever, and I shall be returned to the status that I hold prior to my executing such Power of Attorney.

WITNESS my Hand and Seal this 30th day of December, 2009.

Mary Beth Sjoberg
Mary Beth Sjoberg

The foregoing Revocation of *Durable Power of Attorney* dated December 30, 2010, was signed, sealed, published and declared by Mary Beth Sjoberg as and for her revocation of the authority of Paula S. Saine as her attorney in fact, and we, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Carolyn Beasley Brown of Columbia, South Carolina

Rachel J. Jones of Columbia, South Carolina

EXHIBIT A

PROBCT 000180

RTT SJOBERG 000622

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that she saw Mary Beth Sjoberg sign, seal and as her act and deed, deliver the within written REVOCATION OF *DURABLE POWER OF ATTORNEY* DATED 10 December 30, 2009, that said witness together with the other witness whose name is also above subscribed witnessed the execution thereof.

Carolyn Burden Brown
(witness)

SWORN to before me this 30th day of December, 2010

Notary Public for South Carolina
My Commission Expires: Aug. 2, 2010

PROBCT 000181

RTT SJOBERG 000623

ROA000434

STATE OF SOUTH CAROLINA)
) DURABLE
) POWER OF ATTORNEY
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS, that I, Mary Beth Sjoberg, have constituted and appointed, and by these presents do constitute and appoint Paula S. Saine, as my attorney in fact with power:

a. to sign my name to checks, to endorse checks, to cash checks, to deposit checks, and to do all such things with respect to negotiable instruments other than checks.

b. to satisfy any mortgage which I now own or hereafter acquire.

c. to enter any lockbox in my name anywhere and to add to or remove any contents therefrom.

d. to withdraw and use for my benefit any money which I may have in any bank, savings or investment institutions.

e. to buy, sell, or transfer any stocks, bonds or investment securities in my name.

f. to collect and recover any sums of money or property due me and to prosecute any cause of action which I may have before any of the courts of this or some other state or of the United States.

g. to prosecute in my name, or in her own name on my behalf, any cause of action which I may have against any person or persons, in any court of this state, of any other state, of the United States or of any foreign country and to employ attorneys for such purposes.

This General Power of Attorney shall not be affected by physical disability or mental incompetence by me which might render me incapable of managing my own estate. The authority conferred herein is exercisable notwithstanding any subsequent physical disability or mental

MBS

incompetence on my part.

Should I become mentally disabled, my attorney shall not be required to file any statement or inventory with any court and shall not be required to post a surety bond.

All of which my said attorney is authorized to do as I might or could do if I were personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of May, 2007.

Mary Beth Sjoberg
Mary Beth Sjoberg

ATTESTATION

The foregoing Durable Power of Attorney was this 23rd day of June, 2007, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Barbara H. Thomas
Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

Barbara H. Thomas
Witness 1

Sworn to before me this 23rd
day of June, 2007.

Notary Public for South Carolina.
My Commission Expires: 8/2/10

PROBCT 000184

RTT SJOBERG 000625

ROA000436

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Bonnie Faye Kirkland, employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on October 26, 2012 at the following addresses:

Document Served:

Second Memorandum in Support of Motion to Reconsider

Counsel Served:

Annie B. Hightower, Esquire
Aiken & Hightower
1634 Main Street, Suite 200
Columbia, SC 29201

Rita Bragg Cullum, Esquire
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

The Honorable Jacqueline D. Belton
Associate Probate Judge
51701 Main Street
2nd Floor Suite 207
Columbia, SC 29201

Bonnie Faye Kirkland, Litigation Assistant

EXHIBIT R

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**Case No. 2011-GC-40-00047**
COUNTY OF RICHLAND	)	**Case No. 2011-GC-40-00048**
IN THE MATTER OF:	)	
MARY BETH MOORE SJOBERG,	)	
	)	
PAULA S. SAINE,	)	**ORDER DENYING MOTION**
AS THE ATTORNEY-IN-FACT FOR	)	**TO RECONSIDER**
MARY BETH MOORE SJOBERG,	)	
AND AS THE DAUGHTER OF	)	
MARY BETH MOORE SJOBERG,	)	
	)	
Petitioner.	)	
	)	

FILED
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THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File, on August 30, 2012, by Robert P. Wood (hereinafter "Mr. Wood") of Rogers Townsend & Thomas, PC (hereinafter "RTT" or "the Firm"). The Motion was filed after the Firm's receipt of an Order dated July 31, 2012 which directed RTT to turn over any and all estate planning documents executed by Mary Beth Moore Sjoberg (hereafter "Mrs. Sjoberg") to Paula S. Saine (hereinafter "Ms. Saine"), as Attorney-in-Fact, Temporary Guardian and Temporary Conservator for Mrs. Sjoberg. Thereafter, an Amended Order for Release of Client Documents was executed on August 24, 2012 and sent to RTT to clarify the specific documents the Firm was directed to produce and to who the documents were to be delivered.

Mr. Wood has asked this Court to reconsider its Orders of July 31, 2012 and August 24, 2012 requiring the Firm to turn over specific Estate Planning documents, based on a claim of attorney-client privilege and work product doctrine. In addition to his Motion to Reconsider, Mr. Wood has also submitted two Memorandums in Support of his Motion, filed on September 17,

2012 and October 26, 2012, respectively. Also, A. Bea Hightower (hereinafter "Ms. Hightower"), Guardian *ad Litem* for Mrs. Sjoberg, filed a memorandum in Opposition to Motion to Reconsider, regarding this matter.

FACTUAL AND PROCEDURAL BACKGROUND

This matter initially came before the Court as a result of the filing of Summons and Petitions for Finding of Incapacity and Appointment of Guardian and for Protective Order and Appointment of Conservator for Mrs. Sjoberg, which were filed on April 22, 2011 by Rita Bragg Cullum (hereinafter "Ms. Cullum"), attorney for Ms. Saine. Ms. Saine is the daughter of Mrs. Sjoberg. After the initial proceedings, which were held on May 9, 2011, there was a preliminary finding of incapacity, pursuant to S.C. Code Ann. §62-5-101(1), 1976, as amended, based on a Doctor's Affidavit Regarding Capacity and an Examiner's Report from Larry W. Nelson, M.D. The language of the May 12, 2011 Orders, which were issued pursuant to the May 9th hearing, made it clear that the appointments were temporary and that further proceedings would be held for the Court to receive a preliminary report from the Guardian *ad Litem* and to receive updates regarding these matters.

Accordingly, a Status Hearing was scheduled for June 22, 2012 regarding both matters. On May 16, 2011 a Notice of Status Hearing regarding the June 22nd hearing was mailed to Ms. Saine, Ms. Hightower, and Ms. Cullum. On May 17, 2011 the same Notice of Status Hearing regarding the June 22nd hearing was mailed to Mrs. Sjoberg and to Robert J. Thomas (hereinafter "Mr. Thomas). The Court was notified of a conflict, and on May 18, 2011 a Notice of Rescheduled Status Hearing, which was then set for June 21, 2011, was mailed to Ms. Saine, Ms. Hightower, Ms. Cullum, Mrs. Sjoberg, and Mr. Thomas. Thereafter, the Court was again notified of a conflict, and on May 26, 2011 another Notice of Rescheduled Status Hearing, which was re-set for July 11, 2011, was mailed to Ms. Saine, Ms. Hightower, Ms. Cullum, Mrs. Sjoberg, and Mr. Thomas.

On June 6, 2011 Ms. Cullum, by way of her firm's courier, personally served Angela Kirby, Esquire, Robert J. Thomas, Esquire, and Amy Landers May, Esquire, at that time all attorneys with RTT, with the Summons and Petitions for Finding of Incapacity and Appointment of Guardian and for Protective Order and Appointment of Conservator, for Mrs. Sjoberg. On June 23, 2011 Pope D. Johnson III (hereinafter "Mr. Johnson") entered his appearance in both matters. Based on a conflict with Mr. Johnson's previously planned vacation, on July 6, 2011 another Notice of Rescheduled Status Hearing, which was then re-set for July 27, 2011, was mailed to Ms. Saine, Mrs. Sjoberg, Ms. Hightower, Mr. Johnson, Mr. Thomas, and Ms. Cullum. On July 19, 2011 Mr. Johnson filed Answers on behalf of Mrs. Sjoberg regarding both Petitions. The Certificates of Service for both Answers indicate that Mr. Johnson's Answers on behalf of Mary Beth Moore Sjoberg were sent to the following: Rita Bragg Cullum, Esquire, Ellis Lawhorne & Sims, P.A.; A. Bea Hightower, Aiken & Hightower, P.A.; and Angela M. Kirby, Esquire, Rogers Townsend & Thomas.

On July 27, 2011 the Status Hearing was finally held, at which counsel and all parties, except Mrs. Sjoberg, were present. As indicated, Mr. Johnson was present as counsel for Mrs. Sjoberg and Ms. Hightower was present as her Guardian *ad Litem*. Neither Mr. Thomas nor anyone else from RTT was present, though Mr. Thomas was sent notice of the proceedings. Mr. Johnson disputed incapacity, but informed the Court at the July 27th hearing that Mrs. Sjoberg told him that she did not want him to contest the appointment of Ms. Saine as her Guardian and Conservator. Ms. Hightower indicated that she visited Mrs. Sjoberg on three occasions before the hearing. She further indicated that while Mrs. Sjoberg had initially wanted to challenge the allegation of incapacity, during the second and third visits Mrs. Sjoberg indicated that Ms. Saine was the only one who was capable of taking care of her and that she was willing to let her do so. Mrs. Sjoberg's major concern was not being able to spend time alone with her male friend and feelings that Ms. Saine had significantly encroached on her independence. Even though Mr. Johnson disputed incapacity, he asked the Court

for time to do additional investigation regarding Mrs. Sjoberg's capacity, in order to determine if she could instruct him not to contest the Petitions filed by Ms. Saine.

At Mr. Johnson's request, William L. Brannon, M.D., of Brannon Neurological Consultants, LLC, examined Mrs. Sjoberg on August 23, 2011. Dr. Brannon's report was filed with the Court on September 6, 2011. The report noted memory issues; Mrs. Sjoberg's statement to Dr. Brannon indicating that "her daughter pays all her bills and she is satisfied with that"; that Mrs. Sjoberg had "a dementing illness consistent with Alzheimer (sic) Disease"; and notation of clinical observations that related to the individual elements of testamentary capacity, which may or may not have been present. The issue of testamentary capacity is not one that this court has ever been asked to rule on. Dr. Brannon's report made no mention of contractual capacity, which is well-recognized in South Carolina as the standard that would be relevant to Mrs. Sjoberg's capacity to retain and instruct Mr. Johnson regarding his representation, as well as the standard of capacity that would be needed in order for Mrs. Sjoberg to be able to execute powers of attorney.

Subsequent to receiving Dr. Brannon's report, the Court e-mailed Mr. Johnson, with copies to Ms. Hightower and Ms. Cullum, asking for clarification as to Mr. Johnson's position regarding whether he would be able to abide by his client's instruction to drop these matters. On September 16, 2011, Mr. Johnson wrote to the Court and indicated that he, Ms. Hightower, and Ms. Cullum had not been able to reach any agreement regarding Mrs. Sjoberg's capacity or the extent of her incapacity, if any. In his letter Mr. Johnson asked for a status conference, and the Court responded to him, with copies to Ms. Hightower and Ms. Cullum, indicating that in order to move forward a status hearing should be scheduled to determine if Mrs. Sjoberg had contractual capacity when she made her statement to Ms. Hightower and gave instructions to Mr. Johnson to drop these matters, or at any other time that documents were executed by Mrs. Sjoberg. Accordingly, on September 23, 2011, Notice of Status Hearing, which was set for October 26, 2011, was mailed to Ms. Saine, Mrs.

Sjoberg, Ms. Hightower, Mr. Johnson, and Ms. Cullum. This was the first hearing for which Mr. Thomas was not sent notice, as Mr. Johnson had previously entered his appearance, filed Answers, and appeared in court on behalf of Ms. Sjoberg.

On October 26, 2011, the hearing was held to address only the issue of Mrs. Sjoberg's capacity. Dr. Nelson testified as an expert in those proceedings, and the Court also received sworn testimony from Mr. Johnson, Ms. Lori Sjoberg, Ms. Delores Williams, and Ms. Essie Gause regarding their interactions with Mrs. Sjoberg from June of 2011 through the date of the hearing. The Court also considered the previously submitted medical evaluation and report of Erik Crook, M.D., finding that Mrs. Sjoberg met the definition of an incapacitated person under S.C. Code Ann. §62-5-101(1), 1976, as amended, and that she was in need of care. Without objection, the report of William L. Brannon, M.D. was also considered by the Court. Ms. Hightower thoroughly investigated all issues presented and agreed that Mrs. Sjoberg had remained an incapacitated adult since the initial assessment in May of 2011, and that Mrs. Sjoberg was in need of someone to make health care decisions and to manage her assets and financial affairs.

Dr. Nelson's testimony confirmed that Mrs. Sjoberg met the definition of incapacity at the time of his initial examination on May 3, 2011, and that she continued to meet the definition of incapacity at the time of the October 2011 hearing, as defined in S.C. Code Ann. § 62-5-101, 1976, as amended, due to mental deficiency. Based on all of the available medical evidence the Court ruled from the bench regarding the issue of capacity, finding that Mrs. Sjoberg was incapacitated. A proposed order was circulated among counsel for the parties, and while awaiting feedback the Court found that its ruling from the bench regarding Mrs. Sjoberg's incapacity was sufficient to extend the appointment of Paula S. Saine as Temporary Guardian. More detail regarding this proceeding is contained in the Court's Order Confirming Ongoing

Incapacity and Order Regarding Motion to Strike Appearance of Counsel, dated December 2, 2011.

Paula S. Saine continues to act as Temporary Guardian and Temporary Conservator for Mary Beth Moore Sjoberg, with the most recent order extending the temporary guardianship filed on November 14, 2012, *Nunc Pro Tunc to November 11, 2012*. The temporary conservatorship, established by the May 12, 2011 Order, was based on Dr. Nelson's initial finding of incapacity on May 3, 2011. Mrs. Sjoberg's incapacity was confirmed at the October 26, 2011 hearing, which necessitated continuing the temporary conservatorship (and the guardianship) until the mandatory mediation required pursuant to the Probate Court Mediation Rules could be scheduled and held. However, events subsequent to that time may have made mediation unnecessary.

JURISDICTION

Mr. Wood argues that the Court does not have personal jurisdiction over Mrs. Sjoberg, because she was never personally served with the Summons and Petitions in these cases. The issue of jurisdiction is one to be resolved between Rogers Townsend & Thomas and Ms. Cullum; it was never raised during these proceedings and is not before the Court at this time, though Mr. Wood seeks to use the issue as a basis for not turning over documents.

However, the purpose of the extensive factual and procedural background in the previous section of this Order is, in part, to make clear the numerous opportunities on the part of Mr. Thomas and RTT, as well as on the part of Mr. Johnson, to raise this issue during the litigation of these cases. Mr. Thomas and two other attorneys at RTT were personally served with the Summons and Petitions in both matters and Mr. Thomas received notice of every proceeding that

was scheduled or re-scheduled after the May 9, 2012 hearing. That included the Notice of Hearing that was mailed to all attorneys and parties regarding the July 27, 2012 review hearing. However, Mr. Thomas never appeared in court or by way of a response to any pleading filed in these matters, and he never sought to raise the issue of personal jurisdiction. In addition, Mr. Johnson filed Answers in both matters, and he never raised the issue of any jurisdictional defects in either Answer or in any subsequent pleadings. As previously noted RTT was served with a copy of the Answers by mailing them to Ms. Kirby, so the Firm was aware at the time that Mr. Johnson did not assert any jurisdictional defects with regard to these matters.

Finally, no appeal was filed in the Circuit Court regarding any of the numerous Orders filed in these matters, and those Orders are now the law of the case. Accordingly, for purposes of this Court's consideration of Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File, the assertion of jurisdictional flaws in the proceedings has been waived.

PRIVILEGE & WORK PRODUCT DOCTRINE

Pursuant to S.C. Code Ann. §62-5-427, 1976, as amended, "... the conservator and the court should take into account any known estate plan of the protected person [and] any revocable trust of which he is the settlor" in order to aid the conservator "...in selecting assets of the estate for distribution under subsections (a) and (b) of §62-5-425..." This code section does not require any prior action from the Court before it can be utilized. It is only with the aid of these documents that the Conservator can effectively manage the assets of the protected person in a way that would be the closest to their wishes while still being in their best interests. Additionally, S.C. Code Ann. §62-5-408, 1976, as amended, states that the Court has certain powers which may be "exercised directly or through a conservator in respect to the estate and

affairs of protected persons..." Subsection 3(c) further states that "... the court also must inquire into and consider...the estate plan of the [protected] person..." This subsection must be read first in order to understand the layout of section 3. Subsection 3(c) states that when exercising the powers that the Court may exercise under Subsection 3(b), the Court "must inquire into and consider... the estate plan ..." Subsection (b) and subsection (a) then proceed to state specific requirements of inclusion of parties and specificity of petitions; however, the Court does not have to be entertaining such a petition to consider the estate plan of the individual. S.C. Code Ann. §62-5-408 merely imposes a heightened requirement on the Court that it "must... consider" while S.C. Code §62-5-427 states that the conservator and the Court "should take into account" the same documents. The Code permits the Court and the Conservator to view these documents pursuant to §62-5-427 and §62-5-408 and strengthens the fact that these documents should be used and considered by the Court in the management of the assets of the protected person.

Clearly, the fact that the Code includes such provisions indicates the importance the Legislature placed on the ability of the Court and the fiduciary operating on behalf of the protected person to take into account any planning documents executed by the protected person before his or her incapacity. In recognizing this necessity, allowing the claim of privilege would defeat the intention of the Legislature that the conservator and the Court have access to the documents in order to fulfill their responsibilities to the protected person.

Paula S. Saine, A. Bea Hightower as Guardian *ad Litem*, and this Court need to review the estate planning documents of Mrs. Sjoberg to determine whether a Permanent Guardian and a Permanent Conservator need to be appointed. In addition, if a decision is reached that permanent appointments are needed, the estate planning documents of Mrs. Sjoberg will be necessary to aid

Paula S. Saine in the management of the assets of Mrs. Sjoberg pursuant to S.C. Code Ann. §62-5-427, to make sure her wishes are considered and protected as much as possible.

Finally, privilege cannot be asserted if it has already been waived by action and consent. On November 3, 2010, Mr. Thomas wrote a letter to Ms. Saine in which he recognized her as being part of the privileged discussions regarding Mrs. Sjoberg's planning documents. The letter asks for Ms. Saine's assistance in reviewing a draft of Mrs. Sjoberg's Will that was included with the letter. This, in combination with the above, effectively eliminates any compelling argument with regard to privilege that has been asserted by Mr. Wood. As a point of information, no work product of Mr. Thomas or RTT has been requested by this Court.

CONCLUSION

Mr. Wood has asserted arguments regarding this Court's authority to compel RTT to produce Mrs. Sjoberg's estate planning documents and other documents necessary for Ms. Saine to make a decision as to whether there is a need for a permanent Guardianship and/or a permanent Conservatorship. However, no action was ever before this Court regarding the Court's personal jurisdiction over Mrs. Sjoberg. In addition, the issue of privilege is not an issue at all, as the Code contemplates the need for the conservator and the Court to have the estate planning documents of the protected person, and Mr. Thomas had already waived attorney-client privilege regarding Mrs. Sjoberg's estate planning documents when he sent a copy of a draft of Mrs. Sjoberg's Will to Ms. Saine, and asked for her feedback. It is within the authority of the Court to determine whether attorney-client privilege applies, and the decision of the trial judge will not be reversed absent an abuse of discretion. Ross v. Med. Univ. of South Carolina, 317 S.C. 377,453 S.E.2d 880 (1994) (citing State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980)). It is

the ruling of this Court that attorney-client privilege does not apply, and the documents stated in this Court's July 31, 2012 and August 24, 2012 Orders should be produced by RTT.

THEREFORE, IT IS HEREBY ORDERED that after carefully considering, reviewing, and re-reading motions, and the supporting memoranda of counsel, this Court respectfully **DENIES** Robert P. Wood's Motion to Reconsider. Rogers Townsend & Thomas, PC shall have until Thursday, December 6, 2012 at 5:00 p.m. to turn over all of Mrs. Sjoberg's estate planning documents, pursuant to the Order for Release of Client Documents executed on July 31, 2012 and the Amended Order for Release of Client Documents executed on August 24, 2012.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

December 4, 2012
Columbia, South Carolina

EXHIBIT S

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

In the Matter of: Mary Beth Sjoberg,

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, and as the Daughter of Mary Beth Moore Sjoberg, Petitioner.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-40-8088

Submitted By: Robert P. Wood (SC Bar # 6206)
Address: Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
Telephone # (803) 771-7900
Fax# (803) 343-7017

FILED
2012 DEC -6 PM 3:
RICHLAND COUNTY, S.C.
C.C.P. & G.S.

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts – Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20___-CP-____-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture—Petition(840)	☒ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture—Consent Order	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)

Special/Complex /Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of State Depositions (650)
☐ Other (699)	☐ Sexual Predator (660)

Submitting Party Signature: _____ **Date:** 12/6/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA / 234 (01/2010)

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed..

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Case are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Request for temporary relief;

    c. Appeals;

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures and

    h. Cases that have previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

910026-03214

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

SCCA / 234 (01/2010)

STATE OF SOUTH CAROLINA)
RICHLAND COUNTY)

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

In the Matter of: Mary Beth Moore Sjoberg,

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner.

DOCKET NO. _____

FILED
2012 DEC -6 PM 3:39
JEANETTE W. WALKER
C.C.P. & G.S. RICHLAND

I certify that this action is exempt from ADR because:

☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;

☑ this action is appellate in nature;

☐ this is a post-conviction relief matter;

☐ this is a contempt of court proceeding;

☐ this is forfeiture proceeding brought by the State;

☐ this is a case involving a mortgage foreclosure; or

☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Robert P. Wood (SC Bar #6206)
Counsel for Robert J. Thomas and
Rogers Townsend & Thomas, PC

Defendant/Attorney(s) for Defendant(s)

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900

Date: 12/6/12

910026-03214

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	Case No. 2011-GC-40-00047
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00048
EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC	)	
IN THE MATTER OF: MARY BETH MOORE SJOBERG,	)	
PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG,	)	NOTICE OF INTENT TO APPEAL
Petitioner.	)	

CLAIRE I. McBRIDE
S.C.P. & C.S.
2012 DEC -6 PM 3:39
FILED

Pursuant to Section 62-1-308 of the South Carolina Code, as amended, Robert J. Thomas and Rogers Townsend & Thomas, PC appeal the following Orders of the Honorable Jacqueline D. Belton: Order for Release of Client Documents, dated July 31, 2012, Amended Order for Release of Client Documents, dated August 24, 2012, and Order Denying Motion to Reconsider, dated December 4, 2012.

Robert P. Wood (SC Bar #6206)
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Counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC

December 6, 2012

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Robert P. Wood, attorney with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 6, 2012 at the following addresses:

FILED
2012 DEC -6 PM 3:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

Document Served:

NOTICE OF INTENT TO APPEAL

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Robert P. Wood (SC Bar #6206)

EXHIBIT T

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC IN THE MATTER OF: MARY BETH MOORE SJOBERG, PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH MOORE SJOBERG, AND AS THE DAUGHTER OF MARY BETH MOORE SJOBERG, Petitioner.	)	IN THE COURT OF COMMON PLEAS Case No. 2012-CP-40-8088 (Probate Case Nos. 2011-GC-40-00047 and 2011-GC-40-00048) GROUNDS OF APPEAL

FILED
2013 JAN 17 PM 4:04
RICHLAND COUNTY, S.C.

Pursuant to Section 62-1-308(a) of the South Carolina Code, Robert J. Thomas and Rogers Townsend & Thomas, PC (collectively the "Appellants") file these Grounds of Appeal of the following Orders of the Honorable Jacqueline D. Belton: Order for Release of Client Documents, dated July 31, 2012, Amended Order for Release of Client Documents, dated August 24, 2012, and Order Denying Motion to Reconsider, dated December 4, 2012. The Appellants received written notice on December 5, 2012. The Appellants filed their Notice of Intent to Appeal with both the Richland County Clerk of Court and Richland County Probate Court on December 6, 2012. As required by Section 62-1-308(a) of the South Carolina Code, the original of this Grounds of Appeal are filed with the Richland County Probate Court. A duplicate original is also filed with the Court of Common Pleas, sitting as the appellate court in this matter.

FACTS

On Friday, April 21, 2011, Paula S. Saine sought to be appointed Guardian and Conservator for mother, Mary Beth Moore Sjoberg (hereinafter "Ms. Sjoberg"). Following a hearing, Ms. Saine was appointed Temporary Guardian and Conservator on May 11, 2011. Thereafter, Ms. Saine requested her mother's estate planning documents be turned over to her as Temporary Guardian and Conservator. On July 31, 2012, the Probate Court entered an order requiring the Appellants to produce Ms. Sjoberg's estate planning documents and provide them to Ms. Saine. On August 24, the Probate Court amended the initial order and required the Appellants to turn over Ms. Sjoberg's estate planning documents and submit them to the Probate Court "for examination and safekeeping."

Thereafter, the Appellants filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Probate Court's file. The Appellants argued that the Probate Court lacked the power to enter the orders requiring them to turn over the estate planning documents and argued such production violate the attorney-client privilege, the work product doctrine, and the Rules Of Professional Responsibility.

On December 4, 2012, the Probate Court denied the Appellants' motion to reconsider. In denying the Appellants' motion to reconsider, the Probate Court concluded that it had power to compel the production of Ms. Sjoberg's Estate Planning Documents. First, the Probate Court found that the issue of personal jurisdiction was not before it and could not serve as a basis for Appellants withholding the estate documents. Second, the Probate Court concluded that Section 62-5-408 and 62-5-427 of the South Carolina Probate Court expressed a clear legislative intent that both the conservator and the Court be allowed access to the estate planning documents. Third, the Probate Court concluded that recognizing a claim of attorney-client privilege would

defeat the "intention of the Legislature that the conservator and the Court have access to the documents in order to fulfill their responsibilities to the protected person." Finally, the Probate Court concluded that even if the attorney-client privilege did apply, it had been waived when Mr. Thomas sent a draft of Ms. Sjoberg's will in 2011.

ISSUES

I. Whether the Probate Court erred in concluding that it had the power to issue the underlying Production Orders despite never obtaining jurisdiction in the conservatorship proceeding?

   a. Was Ms. Sjoberg ever served with the summonses and petitions?

   b. Was Paul Saine's supposed consent to the relief sought in her own petition binding on the very person against whom she sought relief?

   c. Did Ms. Sjoberg waive service of the summonses and petitions or of notice of the hearing?

   d. Do S.C. Code Ann. §§ 62-5-408 or 62-5-427 in fact authorize the Production Orders in this case?

   e. Did the Probate Court have the authority to enter the Production orders to determine whether or not the documents were valid?

   f. Did the Probate Court have the authority to enter the Production Orders to ensure the preservation of the documents?

II. Whether the Probate Court erred in concluding that S.C. Code Ann. §§62-5-408 and 62-5-427 authorized its order requiring Appellants produce a living person's estate planning documents?

   a. If the purpose of the Production Orders were to allow it to take into account any known estate plan of Ms. Sjoberg, did the Court first hold a hearing on the "specific relief sought"?

   b. Was a petition for appointment of a conservator pending when the Production Orders were entered, and had a preliminary hearing in which Ms. Sjoberg had notice been held when the Production Orders were entered?

   c. Were the Court's actions for the benefit of Ms. Sjoberg and her estate?

d. By the time the Production Orders were entered, had Ms. Sjoberg actually been made a party to the proceedings, and did the petition allege had she was incapable of consenting to the relief sought?

III. Whether the Probate Court erred in concluding that the attorney-client privilege and work product doctrine did not apply?

STANDARD OF REVIEW

The South Carolina Probate Code provides that a final order of the probate court may be appealed to the circuit court. S.C. Code Ann. § 62-1-308(a). The circuit court must "hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(d). This provision sets forth the standard of review for an appeal to the circuit court. Matter of Howard, 315 S.C. 356, 434 S.E.2d 254 (1993). In Howard, the South Carolina Supreme Court held that an appeal from the probate court to the circuit court is reviewed under the same standard that an appellate court would apply. Id.

DISCUSSION

I. The Probate Court never acquired jurisdiction in the conservatorship proceeding; therefore, the Production Orders are invalid.

A. The Probate Court Did Not have Personal Jurisdiction over Ms. Sjoberg

a. Ms. Sjoberg was never served with the summonses and petitions.

A review of the file shows that Ms. Sjoberg was never personally served with the summons and petitions in these cases. The alleged incompetent person must be personally served. SC Code § 62-5-405 provides:

> (a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition.

Service is jurisdictional:

> After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:
>
> > (1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
> >
> > (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and....

(Emphasis added.)

No statute or rule we have found allows substitute service or service on an attorney-in-fact. See also Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which provides in relevant part:

> (d) Summons: Personal Service. ... Service [of a summons and complaint] shall be made as follows:
>
> (d)(2) Minors, Incompetents and Persons Confined. Upon ... an incompetent person by delivering a copy of the summons and complaint to such ... incompetent personally. ...

b. Paula Saine's supposed consent to the relief sought in the summonses and petitions is invalid.

If Ms. Saine claims she held a power of attorney authorizing her to accept service, we have not seen it. The copy of the power of attorney we have seen does not give Ms. Saine the power to accept service of a lawsuit or to defend one. And, at any rate, the copy of the power of attorney we have seen was revoked long before Ms. Saine purported to use it to accept service. Id.

b. Ms. Sjoberg was never given notice of the hearing that resulted in the appointment of a conservator.

First, nothing in the Court's file shows that Ms. Sjoberg was ever sent notice of a hearing for appointment of a conservator as required by S.C. Code § 62-5-401 (providing that upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator).

Secondly, we point out that SC Code § 62-5-405 requires notice of a petition for appointment of a conservator to be given to "interested persons." Mr. Thomas was certainly an interested person, and counsel for Ms. Saine knew it. See Aff. of Robert J. Thomas, ¶¶ 9 – 11.

Finally, we point out that SC Code § 62-5-407 provides:

> (b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem.

Counsel for Ms. Saine knew that Mr. Thomas was representing Ms. Sjoberg yet allowed the petition to move forward without his knowledge until he finally learned on Saturday, May 14, 2012, about the proceedings (which had been going on since April 22, 2011.

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme

Court reversed an order disqualifying a party's attorney and held that the order the "right to be represented by an attorney of ones choosing" is a substantial right.

c. Ms. Sjoberg has not waived service or notice of the hearing.

The Court expressed in an email its belief that Attorney Pope Johnson waived service of the summons and petition and waived notice of the hearing by serving an answer that did not reserve those defenses and by not raising them at the hearing he attended. However, the Court also found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

Finally, waiver of notice of the hearing by the person to be protected is not effective unless she attends the hearing (which nothing in the Probate Court's file shows she did) or unless her attorney gives notice of the waiver (which nobody did). SC Code § 62-5-405(b).

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Finally, as a matter of common sense, we urge this Court to think about what happened here. At 3:55 PM on Friday, April 22, 2011, while Ms. Sjoberg was out of town, Paula Saine's lawyer carried papers to the Richland County Probate Court for filing. Those papers contained a petition that the Court appoint a conservator for an allegedly incompetent person, and they contained consent to that relief signed by the very person who was petitioning for that relief. As a result, without any sort of notice, Ms. Sjoberg found that her assets had been frozen and taken from her. We submit that neither the South Carolina General Assembly nor society in general will tolerate this sort of conduct. There are reasons why a summons and petition and a hearing notice need to be served on an allegedly incompetent person personally.

B. The Probate Court did not have Subject-Matter Jurisdiction to order the Turnover of a Living Person's Will

The Court's Production Orders were not a lawful exercise of its powers.

First, the Probate Court lacks the "power to entertain a suit for the establishment or annulment of a will of a living testator." Alexander v. Walden, 287 S.C. 126, 130, 337 S.E.2d 241, 243 (Ct. App. 1985). Further, the Probate Court lacks the power to determine the validity of a living testator's will. Id. Thus, it logically follows that a probate court has no reason to examine a living testator's will. Nor is there a statutory provision that allows for a person to file her will with the court prior to her death. The General Assembly deliberately omitted the provision of the Uniform Probate Code that provides for such a procedure. Moreover, the probate court has no reason to require an attorney to turn over his client's will for safekeeping because of the attorney's ethical duty to "hold property of others with care required of a professional fiduciary." Cmt. 1, Rule 1.15, SCRP. Finally, an attorney is only required to deliver a will to the probate court after the person's death. S.C. Code Ann. § 62-2-901.

Furthermore, the issue of whether a court can compel the production of a living testator's estate planning documents appears to one of first impression in South Carolina. Fortunately, several states courts have addressed this exact issue and have generally concluded that a court lacks the authority to either (1) generally compel production of the will of a living testator or (2) order a will be turned over to a guardian or conservator. See e.g., In re Guardianship of York, 44 Wn. App. 547, 723 P.2d 448 (Wash. Ct. App. 1986); In Re Conservatorship of Du Nah, 106 Cal. App. 3d 517 (Cal. App. 2d Dist. 1980). For example, in Baumann v. Willis, 721 S.W.2d 535 (Tex. App. 1986), the court addressed an analogous factual situation. There, the guardian filed suit seeking a court order requiring the ward's personal attorney to turn over the original will. The trial court denied the guardian's request. On appeal, the court of appeals affirmed the trial court's decision. The court held that absent a showing that the attorney threatened to destroy the will, the guardian's possession of the will was not necessary to "the administration of the guardianship, was necessary to the guardian, or how its unavailability prevented the guardian from performing her duties." The court concluded:

> The will does not in and of itself have value to the ward such as a note or a security, nor is it a business paper necessary to conduct the business or affairs of the ward. Any entrustment here is not of the document itself, but an entrustment of the keeping of the confidence of the devises contained in the will. These were not to be revealed, but to be kept secret from the specific person who is now guardian and who now seeks possession of the will and, thus, the secret desires or wishes of the ward with respect to the disposition of the ward's estate upon her death.

721 W.2d 535, 538 (Tex. App. 1986).

In our case, the Probate Court did not have the authority to issue the Production Orders. First, it never acquired personal jurisdiction over Ms. Sjoberg. Furthermore, based on the holding in Alexander, the Probate Court lacked the power to examine or make a determination as to whether Ms. Sjoberg's will is valid. Lacking this power, there is simply no reason why the

Probate Court needed to examine her will and other estate planning documents. Second, just as in Baumann, this Court should not force the Appellants to turn over Ms. Sjoberg's estate planning documents because there is no danger that the Appellants will destroy the documents. Third, there has been no showing as to how Ms. Sjoberg's estate planning documents are necessary to the administration of the guardianship, are necessary to her guardian, or how their unavailability prevents her guardian from performing her duties.

II. The Probate Court erred in concluding that the Probate Code granted it the authority to order Appellants turn over the estate planning documents.

Section 62-5-427 of the South Carolina Probate Code (the "Probate Code") provides that the conservator and the court "should take into account any known estate plan of the protected person" when making investments, distributing assets, or exercising certain other powers. S.C. Code Ann. § 62-5-427. Section 62-5-408 of the Probate Code gives the Probate Court power to take certain actions either "directly or through the conservator." § 62-5-408(a). Before exercising one of these enumerated powers, the court must hold a hearing on the "specific relief sought" and "must inquire into and consider any known lifetime gifts or the estate plan of the person . . . " in deciding whether to grant the requested relief. The subsections § 62-5-408 will be addressed in turn:

Section (1) provides that while a petition for appointment of a conservator is pending and after a preliminary hearing of which the protected person had notice, the court may do things with the protected person's property if the petition asks the court for temporary relief. If the court takes the actions requested of it, then it must give notice of its actions to "interested parties" as soon as practicable thereafter.

Section (3)(a) then provides that after a hearing and determination that a conservator needs to be appointed for the protected person, the court, for the benefit of the protected person

and the estate, has all the powers over the protected person's estate that she could exercise if she were not under a disability (such as incompetence), except to make a will.

Section (3) then lays out all the various powers the court can exercise so long as, pursuant to Section (3)(b), in the petition seeking that specific relief, the incapacitated person and her known heirs and her devisees, and her donees, and her beneficiaries are made parties to the action and so long as the petition alleges that the incapacitated person is incapable of consenting to this relief.

Only then, pursuant to Section (3)(c), may the Court consider the protected person's estate plan.

Section (1) envisions a petition separate from the petition for appointment of a conservator ("While a petition for appointment of a conservator ... is pending."). Even if not, Ms. Sjoberg did not get notice of any such petition and did not get notice of any such hearing (as discussed above).

Next, whatever the Court does with this power is limited to actions that are for the protected person's "benefit or the benefit of her dependents." There has been absolutely no showing that an order requiring the production of estate planning documents will benefit Ms. Sjoberg. And she has no dependents.

As to Section (3)(b), there is no allegation in the petition for appointment of a conservator (assuming that petition can be the vehicle for this sort of relief) that Ms. Saine is asking for the specific relief of reviewing or amending Ms. Sjoberg's estate plan (which would be the only reason for it to be revealed). And, again, we do not see how amending Ms. Sjoberg's estate plan would benefit Ms. Sjoberg, and we imagine that is why Ms. Saine did not ask for that specific relief.

As discussed above, the Probate Court was not authorized to force the Appellants to turn over Ms. Sjoberg's estate planning documents based their failure to comply with S.C. Code Ann. § 62-5-408. Furthermore, nothing in the Probate Code suggests that the court or a conservator is entitled to a copy of a conservatee's estate planning documents. This is supported by the fact that South Carolina has not enacted a statute that expressly provides for the production of a conservatee's estate planning documents. California, for example, has enacted such a statute. Cal. Prob. Code § 2586 (West). Importantly, this statute provides "the court may decline to order production of a document if its disclosure is contrary to the conservatee's desire expressed when competent." Law Revision Commission Comments to Cal. Prob. Code § 2586.

Because South Carolina's Probate Code does not contain a similar statute, it is clear that the General Assembly did not intend for the Probate Court to be able to compel the production of Ms. Sjoberg's estate planning documents. Finally, even if authorized by the Probate Code, the Probate Court failed to take into account Ms. Sjoberg's desire that her estate planning documents not be turned over to her daughter.

III. The Probate Court erred in concluding that the attorney-client privilege does not apply to conservatorship proceedings.

In denying Appellants' Motion to Reconsider, the Probate Court concluded that "the issue of privilege is not an issue at all, as the Code contemplates the need for the conservator and the Court to have the estate planning documents of the protected person."

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. The court In re Guardianship of York, 44 Wn. App. 547, 552, 723 P.2d 448 (Wash. Ct. App. 1986), addressed this very issue. There, the Washington Court of Appeals reversed the trial's court order requiring the ward's attorney to produce a copy of the will to the guardian. Id. The court based its holding in part on the attorney-client privilege. The court held that an attorney may not disclose his living client's will prior to their death. The court concluded that even though the Washington Rules of Professional Conduct allow an attorney to disclose privileged information pursuant to a court order, "such compulsion must be used sparingly." Id.

For the same reasons set forth in York, this Court should reverse the Probate Court's order requiring Appellants to turn over Ms. Sjoberg's estate planning documents.

And the same arguments apply to the work product doctrine.

CONCLUSION

In the present appeal, the Probate Court did not have jurisdiction to issue the Production Orders. Moreover, the Probate Court ignored Ms. Sjoberg's wishes and intruded upon the attorney-client relationship in requiring Appellants turn over her estate planning documents.

There was simply no reason for the Probate Court to take such a drastic step. Accordingly, the Probate Court's Production Orders must be reversed.

Robert P. Wood (SC Bar #6206)
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Counsel for Robert J. Thomas and Rogers Townsend & Thomas, PC

January 17, 2012

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2011-GC-40-00047
2011-GC-40-00048

I, Robert P. Wood, attorney with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on January 17, 2013 at the following addresses:

Document Served:

Grounds of Appeal

Counsel Served:

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Aiken & Hightower, P.A.
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Robert P. Wood (SC Bar #6206)

EXHIBIT U

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP408088

Rogers Townsend & Thomas, PC

APPELLANT

Paula Saine, As the Attorney-In-Fact For Mary Beth Moore Sjoberg and as the Daughter of Mary Beth Moore Sjoberg and A. Bea Hightower, As Guardian ad Litem for Mary Beth Sjoberg

RESPONDENT

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

2014 JAN 10 AM 11:08 RICHLAND COUNTY FILED

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: This appeal is dismissed because the appeal is moot.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2161 Date 1-10-14

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Jan, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Robert Wood
ATTORNEY(S) FOR THE APPELLANT

A. Bea Hightower, Rita Bragg Caughman, and Michael Polk
ATTORNEY(S) FOR THE RESPONDENT(S)

Court Reporter Debbie McCurdy

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

RTT SJOBERG 000705

EXHIBIT V

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2014 MAY 16 PM 4:29
PROBATE JUDGE
RICHLAND CO., S.C.

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

AFFIDAVIT OF D. CRAVENS RAVENEL

PERSONALLY APPEARED before me D. Cravens, Ravenel, who, being first duly sworn, deposes and says that:

1. I am a partner in the law firm of Baker Ravenel and Bender, L.L.P. and have been licensed to practice law in the State of South Carolina since 1970.

2. I have had an AV rating from Martindale Hubbell for many years and am a member of numerous professional associations, including the Richland County Bar Association and the South Carolina Defense Trial Attorneys Associations. I have received a number of awards and honors during my years of practice, including the Matthew J. Perry Civility Award and the Richland County Bar Civic Star Award. I was voted a Top Lawyer by the American Register, selected by my peers to appear in the publication Best Lawyers in America, and chosen as a Super Lawyer. I was also elected as a Fellow to the American College of Trial Lawyers.

3. One of my areas of practice includes Professional Liability and Ethics, and I chaired the South Carolina Supreme Court's Committee on Character and Fitness from 1989 – 2004.

4. I have been asked to review the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend & Thomas, P.C. as they relate to the above-captioned matter and, specifically, Mr. Thomas and his firm's response to an order of this court requiring that certain estate planning documents pertaining to Mr. Thomas' representation of his client Mary Beth Moore Sjoberg be produced to the court.

5. I have been provided copies of and have reviewed the following documents:

a. Order for Release of Client Documents filed July 31, 2012;
b. An Amended Order for Release of Documents from this Court filed August 24, 2012;
c. Robert J. Thomas and Rogers Townsend & Thomas, PC's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File;
d. Robert J. Thomas and Rogers Townsend & Thomas, PC's Memorandum in Support of Motion to Reconsider;
e. An Affidavit of Robert J. Thomas dated September 18, 2012;
f. Robert J. Thomas and Rogers Townsend & Thomas, PC's Second Memorandum in Support of Motion to Reconsider;
g. A. Bea Hightower, Guardian ad Litem's Memorandum in Opposition to Motion to Reconsider, dated November 9, 2012;
h. Order Denying Motion to Reconsider filed December 4, 2012;
i. Robert J. Thomas and Rogers Townsend & Thomas, PC's Notice of Intent to Appeal and Grounds for Appeal;
j. Petitioner Paula S. Saine's Motion for Sanctions against Robert J. Thomas and Rogers Towsend & Thomas, PC dated January 21, 2014; and
k. A timeline of events and filings relating to the underlying matter.

6. I have also examined the law cited by Mr. Thomas and his firm, including Rule 1.6 of the South Carolina Rules of Professional Conduct and comment 14 to Rule 1.6.

7. Based upon my review of the documents, my experience as a trial lawyer and in the field of Professional Liability and Ethics, it is my opinion, to a reasonable degree of legal certainty, that Mr. Thomas and his firm acted in accordance with the law in filing and signing

their Motion for Reconsideration, Memorandum in Support of Motion for Reconsideration, Second Memorandum in Support of Motion for Reconsideration, Notice of Intent to Appeal, and Grounds for Appeal; that these filings were not frivolous; that these filings and the arguments contained therein were warranted under existing law; that these filings were not intended to harass or injure another party, were not brought merely for delay or for any other purpose other than the proper protection of the confidences and privileges of their client, Mary Beth Moore Sjoberg.

8. It is my opinion that given Ms. Sjoberg's declaration of incapacity and the facts and circumstances of the underlying case, that Mr. Thomas had little choice but to follow the mandates of Rule 1.6, SCRPC, and investigate the matter and circumstances. It is my opinion that the decision to oppose the production of Ms. Sjoberg's estate planning documents was not frivolous, was based upon the client's interests in having her attorney safeguard her confidences, and that Mr. Thomas and his firm had good grounds to support their decision.

9. It is my opinion that Mr. Thomas' actions and those of his firm were reasonable under the facts and circumstances of the case and were consistent with the actions of a reasonable attorney.

FURTHER AFFIANT SAYETH NOT.

D. Cravens Ravenel, Esq.

SWORN and subscribed to before me
this 15th day of May, 2014.

Patricia Gutierrez (L.S.) n/k/a Patricia Ruggiero
Notary Public for South Carolina
My Commission Expires: 4-22-2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ex Parte Robert J. Thomas and Rogers Townsend & Thomas, PC In the Matter of Mary Beth Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg, Temporary Guardian and Conservator.	)	IN THE PROBATE COURT Case No. 2011-GC-40-00047 and 2011-GC-40-00048 **MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AGAINST ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC**

STATEMENT OF THE CASE

This case began as an action for appointment of Paula Saine (PS) as the guardian and conservator for her elderly mother, Mary Beth Moore Sjoberg (MBMS). This Court entered an Order (Production Order) and an Amended Order (Amended Production Order) requiring the law firm and the lawyer that prepared MBMS's estate planning documents, Rogers Townsend & Thomas, PC (RTT) and Robert J. Thomas (RJT) of that firm, to produce them to MBMS's Guardian ad litem, Annie Bea Hightower (ABH).

RTT and RJT objected to the Production Orders, and RTT personnel signed and filed several documents setting forth the factual and legal arguments in support of their objections to the Production Orders. PS has made a Motion for Sanctions in which she asserts that RTT and RJT violated the South Carolina Frivolous Civil Proceeding Sanctions Act (SCFCPSA), S.C. Code § 15-36-10, and Rule 11 SCRCP in making their objections to the Production Orders. PS submits the following Memorandum in support of her Motion for Sanctions.

STATEMENT OF THE FACTS

On January 11, 2011 , RTJ sent PS an executed copy of a Will of MBMS that was signed by MBMS on November 12, 2010. This Court appointed PS Temporary Guardian and Temporary Conservator for MBMS under Orders (Appointment Orders). On July 31, 2012, this Court entered an Order (Production Order) that compelled RJT and RTT, as estate counsel for MBMS, to produce MBMS's estate planning documents to her Guardian ad litem, ABH. This Court entered an Amended Order (Amended Production Order) on the same subject on August 24, 2012. Thomas and RTT did not produce Sjoberg's estate documents to ABH. Instead, they filed, on August 30, 2012, a Motion to Reconsider and Claim of Privilege (Motion to Reconsider) that attacked this Court's August 24, 2012 Order.

RJT and RTT filed two Memoranda in support of the Motion to Reconsider. Taken together, these Memoranda advance the following arguments:

- this Court's Appointment Orders were invalid because this Court had no personal jurisdiction over Sjoberg for want of service of the initial pleadings on her;
- this Court's Appointment Orders were invalid under the due process clause because Sjoberg was not given notice of the May 9, 2011 appointments hearing;
- this Court's Appointment Orders were invalid because this Court denied Sjoberg the right to counsel of her choice;
- this Court's Production Orders were invalid because this Court had no subject matter jurisdiction to order production of Sjoberg's estate planning documents; and
- this Court's Production Orders were invalid because they compelled Thomas and RTT to violate the attorney-client privilege arising from their representation of Sjoberg.

After review of the parties' written submissions, this Court denied the Motion to Reconsider by Order filed December 4, 2012.

RJT and RTT filed a Notice of Appeal. On January 17, 2013, Thomas and RTT filed a document in the Circuit Court styled Grounds of Appeal. The Grounds of Appeal restates the

arguments set forth in the Memoranda in support of the Motion to Reconsider. The parties to the appeal submitted briefs, and the Circuit Court heard oral argument. The Circuit Court took the appeal under advisement. While the appeal was under advisement, MBMS died. Because of MBMS death, the Circuit Court dismissed the appeal as moot by Order dated April 10, 2014. MBMS's GAL, ABH, received written notice of entry of the Circuit Court's January 10, 2014 Order on January 11, 2014. The Motion for Sanctions was made on January 21, 2014.

After MBMS's death, RTT and RTJ filed the Will of MBMS for probate. The Will of MBMS filed by RTT and RTJ for probate was the exact same executed Will signed by MBMS on November 12, 2010 that RTJ had sent to PS on January 11, 2011.

The Motion for Sanctions asserts that signing and filing of the Motion to Reconsider and the two Memoranda in support of that Motion, violate the SCFCPSA and Rule 11(a) SCRCP for the following reasons:

- a reasonable attorney in these circumstances would believe that under the facts, the position advanced in those filings was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification or reversal of existing law;
- a reasonable attorney presented with the same circumstances would believe those filings were frivolous;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not warranted under existing law or any good faith argument for the extension, modification, or reversal of existing law;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not reasonably supported by the facts;
- those filings are frivolous;
- the arguments made in those filings are frivolous.

PS and the probate estate of MBMS have incurred substantial attorneys' fees and costs in responding to the Motion to Reconsider and to the two Memoranda in support of that Motion.

ARGUMENT

I. OVERVIEW OF THE SCFCPSA AND RULE 11 SCRCP.

SCFCPSA

Under the SCFCPSA, an attorney or litigant may be sanctioned for filing a frivolous pleading, motion or document if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification, or reversal of existing law" S.C. Code § 15-36-10(A)(4)(a)(ii) or "a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous." S.C. Code § 15-36-10(A)(4)(a)(iv).

An attorney or litigant may also be sanctioned under the SCFCPSA for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" S.C. Code § 13-36-10(A)(4)(b) and for "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." S.C. Code § 15-36-10(A)(4)(c). Sanctions under the SCFCPSA may include "an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party." S.C. Code § 15-36-10(G)(1).

The party making the motion for sanctions under S.C. Code § 15-36-10 has the burden of proof. S.C. Code § 15-36-10(C)(2). To meet this burden of proof, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. S.C. Code § 15-36-10(C)(2).

RULE 11 SCRCP

Under Rule 11 SCRCP, "[T]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Rule 11(a) SCRCP. "[A] party and/or the party's attorney may be sanctioned (under Rule 11(a) SCRCP) for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (parenthetical added). "If a pleading, motion or other paper is signed in violation of this Rule (Rule 11(a) SCRCP), the court upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Rule 11(a) SCRCP (parenthetical added).

The party moving for sanctions under Rule 11 SCRCP has the burden of proof. To meet this burden, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. Clegg v Lambrecht, 678 S.E.2d 260, 262 (S.C. App. 2009) ("the party moving for sanctions has the burden to establish the grounds for sanctions by a preponderance of the evidence.") (citing Rutland v Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 97, 637 S.E.2d 316, 319 (Ct. App. 2006).

II. PS HAS AUTHORITY TO BRING THIS MOTION AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MBMS.

According to S.C. Code § 62-3-703(c), [e]xcept as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State ... as his decedent had

immediately prior to death." The decision whether to impose sanctions sounds in equity. The Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003). "As a general rule, the maxim 'Actio personalis moritur cum persona' was not applied within the jurisdiction of equity." Page v. Lewis, 203 S.C. 190, 194, 26 S.E.2d 569, 570 (1943) (citations omitted). In other words, the rule that personal actions die with the person does not apply in the jurisdiction of equity. MBMS's claim for sanctions survived her death, and as the Personal Representative, PS has the authority to pursue that claim.

III. PS'S SCFCPSA CLAIM IS NOT BARRED AS UNTIMELY.

Motions for sanctions under the SCFCPSA must be filed within ten (10) days of notice of final judgment. Pittman v Republic Leasing, 351 S.C. 429, 432, 570 S.E.2d 187, 189-190; Ex Parte Beard, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004). The judgment of the Probate Court in these conservatorship and guardianship actions did not become final until, at the earliest, the date on which MBMS' GAL, ABH, received written notice of the Circuit Court's Order dismissing the appeal as moot. RJT and RTT filed an interlocutory appeal, and much was left to be done in the probate court at the time of that appeal before the probate court produced a final judgment in these actions. No permanent guardian or permanent conservator had been appointed for MBMS, so the actions in the probate court had not reached the level of anything like a final judgment at the time of the appeal. MBMS's GAL, ABH, received written notice of the Circuit Courts January 10, 2014 Order dismissing the appeal as moot on January 11, 2014. The Motion for Sanctions was made on January 21, 2014.

IV. EVEN IF PS'S SCFCPSA CLAIM IS BARRED AS UNTIMELY, HER RULE 11 SCRCP CLAIM IS TIMELY.

"There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment." Russell v Wachovia Bank, 370 S.C. 5, n. 11,

633 S.E.2d 722, n.11 (2006). In support of this proposition our Supreme Court in Russell cited our Court of Appeals' decision in Ex Parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004). In Ex Parte Beard, the Court of Appeals affirmed an order of the trial court that addressed a Rule 11 SCRCP motion even though the motion was made six months after the underlying action was settled and dismissed with prejudice. Ex Parte Beard, 359 S.C. at 359-360, 597 S.E.2d at 839. In fact, whether PS's Motion for Sanctions proceeds under the SCFCPSA or Rule 11 SCRCP, makes no difference because the criteria for awarding sanctions under Rule 11 SCRCP and the SCFCPSA are essentially the same. The Father, 345 S.C. at 72, 545 S.E.2d at 531.

V. A REASONABLE ATTORNEY REVIEWING THE FACTS OF THIS CASE WOULD CONCLUDE THAT RULE 1.6 RPC, RULE 407, SCACR DOES NOT SUPPORT A REFUSAL TO COMPLY WITH THIS COURT'S ORDER REQUIRING PRODUCTION OF MBMS'S WILL AND THAT ANY CLAIM TO THE CONTRARY WAS FRIVOLOUS.

Rule 106(a) RPC, Rule 407, SCACR states that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1.6(b)(7) RPC, Rule 407, SCACR states that a lawyer may reveal information relating to the representation of a client to the extent the lawyer believes necessary "to comply with other law or a court order." Comment 14 to Rule 1.6 RPC, Rule 407, SCACR states that when confronted by an order to reveal information relating to the representation of a client, "the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law."

The inconvenient truth that RTT and RJT have yet to face is that the information that was ordered produced in the Production Orders had already been revealed to PS. The Will filed for

probate after the death of MBMS was exactly the same executed Will that RJT mailed to PS on January 11, 2011, long before RTT and RJT made their Motion to Reconsider and filed their Memoranda in Support of that Motion. Rule 1.6 RPC, Rule 407 allows an attorney to resist revealing information relating to the representation of a client, but it does not allow an attorney to refuse when faced by a court order, to reveal that which has already been revealed. The very person that needed access to MBMS's Will, PS, had already received the executed Will long before RTT and RJT launched this misguided effort to resist production of MBMS's Will. Rule 1.6 RPC, Rule 407, SCACR does not support any of the positions taken by RTT and RJT in the Motion to Reconsider and the two Memoranda in Support of the Motion to Reconsider. No reasonable attorney could have believed otherwise, and the assertion that Rule 1.6 RPC, Rule 407, SCACR somehow supports the refusal by RTT and RTJ to disclose MBMS's Will is frivolous.

V. A REASONABLE ATTORNEY WOULD CONCLUDE THAT THE ATTORNEY-CLIENT PRIVILEGE DOES NOT SUPPORT THE REFUSAL BY RTT AND RJT TO PRODUCE THE WILL AND THAT ANY ATTORNEY-CLIENT PRIVILEGE CLAIM IS FRIVOLOUS.

"The attorney-client privilege protects against disclosure of confidential communications by a client to his or her attorney." Crawford v. Henderson, 356 S.C. 389, 395, 589 S.E.2d 204, 207, 589 S.E.2d 204, 207 (Ct. App. 2003) (citing State v. Owens, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992)). "The (attorney-client) privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures by the client within the relationship is maintained." State v. Doster, 276 S.C. 647, 650-651, 284 S.E.2d 218, 219 (1981) (parenthetical added). However, like other privileges, the attorney-client privilege is

subject to waiver. South Carolina State Highway Dep't v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 620 (1973).

'The attorney-client privilege is owned by the client, and, therefore, can be waived by the client." Floyd v. Floyd, 365 S.C. 56, 86, 615 S.E.2d 465, 482 (Ct. App. 2005) (citing Booker, 260 S.C. at 254, 196 S.E.2d at 620). "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct. App. 1984) (citing Duplan Corp. v Deering Milliken, Inc., 397 F. Supp. 1146 (D.S.C. 1975); U.S. v. Jones, 696 F.2d 1069 (4th Cir. 1982).

Unless he is prepared to admit that he violated Rule 1.6 RPC, Rule 407, SCACR by revealing the Will to PS during MBMS's lifetime, RJT must admit that his disclosure of the Will to PS before MBMS's death was authorized by MBMS. The disclosure of the Will to PS as authorized by MBMS waived the attorney-client privilege that might otherwise have protected the Will from disclosure. Disclosure of the Will to PS waived the attorney-client privilege, and RTT and RJT were well aware of the facts supporting this waiver. A reasonable attorney possessing the knowledge of RTT and RJT about the inter vivos disclosure of MBMS's Will to PS would conclude that that disclosure of the Will to PS waived MBMS's attorney-client privilege to prevent disclosure of the Will and that any argument to the contrary is frivolous.

VI. ANY REASONABLE ATTORNEY REVIEWING THE FACTS OF THIS CASE WOULD HAVE TO CONCLUDE THAT ALL OBJECTIONS AS TO PERSONAL JURISDICTION WERE WAIVED AND THAT ANY CLAIM RAISING THESE WAIVED OBJECTIONS WAS FRIVOLOUS.

According to Rule 12(h) SCRCP, "[a] defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another

action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." The attorney representing MBMS on the Petitions for Guardianship and for Conservatorship, Pope Johnson, made no motions that raised the defense of lack of jurisdiction over the person of MBMS and filed an Answer to the Petitions that did not raise any defense of lack of jurisdiction over the person of MBMS. The defense of lack of jurisdiction over the person was waived, and any reasonable attorney reviewing the facts of this case would conclude that any argument asserting this waived defense is frivolous.

VII. A REASONABLE ATTORNEY WOULD CONCLUDE THAT THE ARGUMENT THAT MBMS'S DUE PROCESS RIGHTS WERE VIOLATED BY THE FAILURE TO GIVE HER NOTICE OF THE MAY 9, 2011 APOINTMENTS HEARING IS FRIVOLOUS.

According to S.C. Code § 62-5-310(A), "[i]f the (probate) court makes emergency preliminary findings that:

(1) a physician has certified, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the (probate) court, with or without petition or notice, may appoint a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311." (parentheticals added and emphasis added)

S.C. Code § 62-5-310(A) clearly authorized this Court to proceed with the temporary appointment hearing held on May 9, 2011 without notice to MBMS. Any argument that proceeding with the temporary appointment hearing on May 9, 2011 somehow violated MBMS's due process rights has no basis in law or fact, and a reasonable attorney would consider that argument frivolous.

VIII. A REASONABLE ATTORNEY WOULD CONSIDER THE ARGUMENT THAT MBMS WAS DENIED THE RIGHT TO COUNSEL OF HER CHOICE FRIVOLOUS.

The attorney who represented MBMS at the October 26, 2011 hearing to consider PS's Petitions to be appointed as permanent conservator and permanent guardian of MBMS, Pope Johnson, was instructed by this Court before that hearing to present evidence at the hearing that MBMS had contractual capacity to retain him. "South Carolina has defined contractual capacity as a person's ability to understand, at the time that the contract is executed, the nature of the contract and its effect." In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854, 857 (Ct. App. 2001) (citing In re: Nightingale's Estate, 182 S.C. 527, 542, 189 S.E. 890, 896 (1937).

Pope Johnson presented a report of William Brannon, MD in which Dr. Brannon gave his opinion that MBMS had only testamentary capacity. "The capacity of a testator to make a will is tested by whether he (1) knew his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977) (citing Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E. 811 (1926)). Testamentary capacity has a lower threshold than contractual capacity, so Dr. Brannon's opinion left this Court with no evidence that MBMS had contractual capacity to retain Pope Johnson. In the absence of any evidence that MBMS had contractual capacity, this Court quite rightly ruled that Pope Johnson's agreement with MBMS to provide legal services was void and removed Pope Johnson as MBMS's attorney.

Having relieved Pope Johnson, This Court appointed Michael Polk (Polk) to act as MBMS's attorney. As MBMS's attorney, Polk interviewed her on two separate occasions and conducted an investigation regarding her legal interests. As requested by this Court, Polk filed a

written report in which he stated, without reservation, that MBMS's legal rights were adequately protected.

RTT and RJT assert that because Mr. Polk was not specifically authorized in the Appointment Orders to advocate the jurisdictional issues raised in their Motion to Reconsider, Polk was limited in the scope of his representation and could not waive the jurisdictional issue on behalf of MBMS. This argument ignores the fact that Polk, as an officer of this Court and as an experience practitioner, does not need direction by this Court to adequately represent MBMS.

Polk reviewed all issues presented and specifically noted the procedural defects as alleged by RTT and RJT. Polk investigated the legal rights of MBMS and found that her interests did not lay in challenging the removal of Pope Johnson as her attorney, nor did they lay in raising procedural defects of process which would prolong the proceedings and create greater anxiety for MBMS. After consulting with his client on two separate occasions, thoroughly reviewing this Court's file, and interviewing necessary participants, Polk concluded that MBMS's rights had been protected and were adequately represented.

Polk fulfilled his duty to MBMS and fully advocated her positions and represented her legal interests. Rule 1.14(a) RPC, Rule 407, SCACR state that "[w]hen a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of . . . mental impairment . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

In his representation of MBMS, Polk determined that MBMS did not want to contest the legal action temporarily appointing her daughter, PS, as her legal guardian and conservator. Polk did not object to this process continuing because having PS appointed as MBMS's permanent guardian and permanent conservator was MBMS's wish. Polk supported MBMS's wish to have

PS appointed her permanent guardian and permanent conservator as any lawyer would in the normal course of the client-lawyer relationship.

MBMS was not denied the attorney of her choice. No evidence was presented that MBMS had contractual capacity to enter into the agreement to provide legal services with Pope Johnson. Under the circumstances, this Court had no choice but to relieve Pope Johnson as MBMS' attorney. A reasonable attorney would have to conclude that under the facts of this case, any argument that MBSB was deprived of her right to the attorney of her choice is frivolous.

IX. A REASONABLE ATTORNEY WOULD CONCLUDE THAT THE ARGUMENT OF RTT AND RTJ THAT THIS COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO ORDER PRODUCTION OF MBMS'S WILL WAS FRIVOLOUS.

According to S.C. Code § 62-5-427, "... the conservator and the (probate) court should take into account any known estate plan of the protected person (and) any revocable trust of which he is the settlor" in order to aid the conservator "in selecting assets of the estate for distribution under subsections (a) and (b) of § 62-5-425." (parentheticals added). S.C. Code § 62-5-427 does not require any prior action from this Court before it can be used. S.C. Code § 62-5-408, states that probate courts have certain powers which may be "exercised directly or through a conservator in respect to the estate and the affairs of the protected person." S.C. Code § 62-5-408(3)(c) states that when exercising its powers under S.C. Code § 62-5-408(3)(b), the probate court "must inquire into and consider any lifetime gifts or the estate plan of the (protected) person." (parenthetical added).

S.C. Code § 62-5-408(3)(a) and (b) state specific requirements for the inclusion of parties and the specificity of petitions, but this Court did not have to be considering such a petition to order the production of the estate planning documents of MBMS. It is impossible to see how the conservator and the probate court can "take into account any known estate plan of

the protected person" unless the probate court has the power to enter an order compelling production of the protected person's estate planning documents setting forth that estate plan. S.C. Code § 62-5-427. It is even more impossible to see how the probate court that "must inquire into and consider ... the estate plan of the (protected) person" could have no power to compel production of the estate planning documents setting forth the estate plan that it must consider. S.C. Code § 62-5-408(3)(c).

S.C. Code § 62-5-427 and S.C. Code § 62-5-408 leave no doubt that this Court had the power to compel production of MBMS's Will. In light of these statutes and the facts of this case, a reasonable attorney would consider the argument that this Court had no power to order production of MBMS's Will frivolous.

CONCLUSION

For the foregoing reasons, this Court should grant PS's Motion for Sanctions against RTT and RJT.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

By: _____

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ATTORNEYS FOR PETITIONER

Columbia, South Carolina
May 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

2014 MAY 20 PM 12:46

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S REPLY TO PETITIONER'S MEMORANDUM SUPPORT OF MOTION FOR SANCTIONS

Robert J. Thomas, Esq. and the law firm of Rogers Townsend & Thomas, PC, submit the following Reply to Petitioner's Memorandum in support of *Motion for Sanctions*. The question before the Court is whether a reasonable attorney would believe that under the same facts and circumstances the actions taken by Mr. Thomas and his law firm were warranted under existing law and not initiated or continued to harass or injure the Petitioner.

DISCUSSION

One of the central arguments set forth by Robert Thomas and Rogers Townsend & Thomas, PC, in their subject motion for reconsideration and supporting memoranda is the lack of personal jurisdiction of the Court over Mary Beth Sjoberg.

In its order denying Mr. Thomas and RTT's motion to reconsider, the Court addressed personal jurisdiction by first stating that "the issue of jurisdiction is one to be resolved between Rogers Townsend & Thomas and Ms. Cullum; it was never raised during these proceedings and

is not before the Court at this time." (Ex. R, p. 6.) However, the Court went on to find that even had the issue been before the Court, "the assertion of jurisdictional flaws in the proceedings has been waived." (Ex. R, p. 7.)

The Court found that waiver occurred as a result of the following three actions or inactions: 1) that Mr. Thomas and RTT received notice of every proceeding after the May 9, 2012 hearing and that Mr. Thomas never appeared in court, filed a responsive pleading, or sought to raise the issue of personal jurisdiction; 2) that Pope Johnson filed answers on behalf of Ms. Sjoberg in both matters and never raised the issue of jurisdictional defects; and 3) that no appeal was ever filed in the Circuit Court regarding any of the numerous Orders in the two matters and those Orders are now the law the case. (Ex. R, p. 7.) Petitioner, in her memorandum in support, adds to the Court's findings in arguing that the court-appointed attorney, Michael Polk, investigated jurisdictional issues and found that Ms. Sjoberg's interests did not lie in raising procedural defects of process. (Petitioner's Memorandum in Support, p. 12.)

In determining whether it was reasonable for Mr. Thomas and RTT to raise the jurisdictional issue, the first premise, which should be acceptable to everyone, is that before turning over any documents Mr. Thomas and RTT had a duty to inquire as to the validity of the order. Through its inquiry, Mr. Thomas and RTT discovered issues that support the decision to challenge the order.

It is undisputed that Ms. Sjoberg was never personally served with the petitions and summonses. Instead, Petitioner accepted service on her mother's behalf utilizing a Power of Attorney that was never filed, did not grant the power to accept service, and had been revoked. (Exs. E; F; & A, ¶¶ 17 & 19.)

It is also undisputed that neither Mr. Thomas nor RTT, outside of their challenges to the

order requiring them to release client documents, made an appearance or filed any objections to jurisdiction. The reason for that fact is that neither Mr. Thomas nor RTT had standing to do so. They were not parties to the two actions or counsel of record. As the Court so clearly articulated in its Order Releasing Documents and Protective Order of October 18, 2012, "[n]either Mr. Wood nor RTT is counsel of record for any party to this action." (Ex. P, p. 1.) Further, "Robert J. Thomas, a member of RTT, previously represented Mary Beth Moore Sjoberg in connection with estate planning and other matters, before she was determined to lack capacity. RTT has not filed any pleading with this Court requesting that a determination be made that it is an interested party in this matter." (Id., p. 1, n. 1.) The failure to take action when no action could be taken cannot be grounds to conclude that Mr. Thomas or RTT waived service of process or lack of personal jurisdiction for a client the Court concluded they did not have.

It is undisputed that Pope Johnson, when he filed answers on behalf of Ms. Sjoberg, did not raise lack of service of process or lack of personal jurisdiction as affirmative defenses. In most situations, that failure would be fatal and would result in a waiver; however, in response to a motion to strike Mr. Johnson as counsel for Ms. Sjoberg, the Court ruled that Ms. Sjoberg "lacked contractual capacity at least since her assessment in May of 2011 and during the course of Mr. Johnson's alleged engagement with her," and that "any contractual engagement between Mrs. Sjoberg and Mr. Johnson is *void*." (Ex. K, p. 6, ¶ 16 & p. 7, ¶ 17) (emphasis added.) In addition, the Court concluded that "Mrs. Saine has never retained Mr. Johnson," and "Mr. Johnson does not have an attorney-client relationship with Ms. Sjoberg that pre-dates this Court's ruling on her incapacity." (Id., p. 3, ¶¶ 4 & 6.) Because the Court ruled that any engagement agreement between Ms. Sjoberg and Mr. Johnson was "void" and that Mr. Johnson was never retained and had no valid attorney-client relationship with Ms. Sjoberg, any actions he

took on her behalf were a nullity. In other words, he could not waive service of process or lack of personal jurisdiction for a client he did not have.

The Court's ruling that Mr. Johnson's engagement with Ms. Sjoberg was void is critical to Mr. Thomas and RTT's analysis. Once declared void, everything Mr. Johnson did on Ms. Sjoberg's behalf was a nullity. At that point in time, therefore, no one had answered on behalf of Ms. Sjoberg and, consequently, no one could have waived lack of service of process or lack of personal jurisdiction.

The Petitioner argues that the court-appointed attorney's actions consummated Mr. Johnson's waiver. However, because the Court did not yet have personal jurisdiction over Ms. Sjoberg, its order appointing Mr. Polk was also a nullity.

The South Carolina Supreme Court, when faced with an order issued without proper notice, determined that the order, and any orders that followed, were a nullity. See Webster v. Clanton, 259 S.C. 387, 192 S.E.2d 214 (1972). In Webster, a father and aunt of a minor engaged in a custody battle. The family court initially awarded the father custody of his son. Following that order, the son made an oral complaint to the court, and the court then spoke to the son's school guidance counselor. Without any formal motion or pleading, the court reversed itself and awarded custody to the boy's aunt. That order was never appealed. Following, the court made several other rulings, including the awarding of child support to the aunt. On appeal of the subsequent orders, the South Carolina Supreme Court determined that the original order awarding custody to the aunt, and upon which all subsequent orders were based, was "clearly void, and of no effect whatever and no appeal was necessary to protect the rights of the father." Webster, 259 S.C. at 391, 192 S.E.2d at 216. The Supreme Court went on to find:

> The orders awarding [the aunt] support are predicated upon her supposed lawful custody under the order of April 22nd, and it follows that such decrees were

> erroneous. It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on.

Webster, 259 S.C. at 391, 192 S.E.2d at 216.

No South Carolina case to counsel's knowledge has addressed the issue of whether a court-appointed attorney can waive lack of service of process or lack of personal jurisdiction. However, a Louisiana court has. In In re Nash, 799 So.2d 1271 (2001), Petitioner Thurman filed a petition for interdiction over Lillian Nash.[1] Thurman attempted to personally serve Nash through "personal service on the party herein named Lillian Faye Nash through Joseph Martinez." Nash, 799 So.2d at 1271. There was no information regarding Martinez's relationship with Nash in the record. After the time for answering had passed, Thurman filed a motion that an attorney be appointed for Nash. The trial court appointed Nash an attorney and the matter was set for trial. On appeal after judgment, the Court of Appeal of Louisiana, Third Circuit, determined that Thurman failed to properly serve Nash. Consequently, the appointment of an attorney was premature. Thurman argued that because the court-appointed attorney did not file an exception to insufficient service that the lack of proper service had been waived. The Louisiana Court rejected the argument:

> [The court-appointed attorney] Skinner filed an answer on January 1, 2001, which did not contain an objection to citation or service of process. However, as we have previously stated, Skinner's appointment was without effect as the original service of Lillian [Nash] was inadequate. Therefore, [court-appointed attorney]

[1] A petition for interdiction is similar to a petition for guardianship and conservatorship, and it is made in order that a person may take control over the person and property of another who is incapable of caring for him or herself. "A full interdict loses control of virtually every aspect of his life, including decisions about place of residence, medical care, financial affairs and the authority to donate property *inter vivos* or *mortis causa*. He also loses control over family law matters, such as child custody and marriage. Kevin Robshaw, Interdiction 101, 51 La. B.J. 270 (2004).

> Skinner's failure to object to the sufficiency of service of process did not result in a waiver. Thus, we find that the judgment of interdiction is an absolute nullity in accordance with [Louisiana law], which provides that a final judgment shall be annulled if rendered "[a]gainst a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction."

Nash, 799 So.2d at 1273.

In the present action, the Court ruled that Pope Johnson's representation of Ms. Sjoberg was "void." Upon that ruling, no person had appeared on Ms. Sjoberg's behalf and, therefore, no one could have waived personal service. It is undisputed that Ms. Sjoberg was not personally served with the petitions and summonses.[2] Until such service, the Court had no personal jurisdiction over Ms. Sjoberg. "A judgment by a court without jurisdiction of both parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on." Webster, 259 S.C. at 391, 192 S.E.2d at 216. Thus, the order appointing Michael Polk, and all subsequent orders, including the order requiring Mr. Thomas and RTT to turn over client documents, was void.

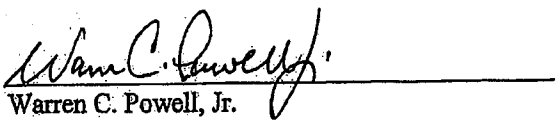
CONCLUSION

Mr. Thomas and RTT had good grounds to raise the issues they raised in their Court filings. Their arguments were not frivolous and were not made for any improper purposes. Consequently, Petitioner's motion should be denied.

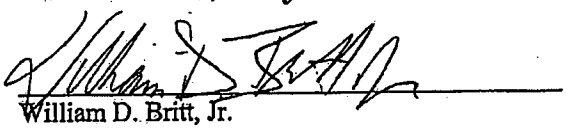
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[2] In her memorandum in support of motion for sanctions, emailed to counsel at approximately 4:15 pm yesterday, Petitioner argues for the first time that under S.C. Code Ann. § 62-5-310(A), personal service for the appointment of a temporary guardian is not necessary "(A) If the court makes emergency preliminary findings that: (1) a physician has certified to the court, orally or in writing, that the person is incapacitated; (2) no guardian has been appointed previously; and (3) the welfare of the incapacitated person requires immediate action." That section deals only with the appointment of a temporary guardian and does not speak to the appointment of a temporary conservator. Petitioner does not address in her memo the argument that Ms. Sjoberg had to be personally served under section 62-5-405(a) for appointment of a conservator or other protective order, and counsel is not aware of any provision that would allow appointment of a conservator absent personal service, which is an undisputed fact in the present action. Further, under section (D) of the statute cited by Petitioner, "[i]f a temporary guardian is appointed without petition or notice under this section, a hearing to review the appointment must be held *after petition and notice and within thirty days after the appointment of the temporary guardian*" (emphasis added). Petitioner was appointed on May 16. The first hearing scheduled by the Court was on June 22, pursuant to the Court's order denying RTT's motion to reconsider. It is undisputed that no hearing was scheduled within 30 days of the appointment.

Respectfully submitted,



Warren C. Powell, Jr.



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AUTHOR'S E-MAIL:NSTAGG@brunerpowell.com

January 15, 2015

VIA Hand Delivery
Patti Trammell, Clerk
Richland County Probate Court
Post Office Box 192
Columbia, SC 29202-0192

Re: IN RE: Mary Beth Moore Sjoberg
Case No. 2011-GC -40-0047 and Case No. 2011- GC-40-0048
Robert J. Thomas and Rogers Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions
Our File No. 3-2120.5

Dear Ms. Trammell:

Please find enclosed herewith for filing an original and two (2) copies of ***Robert J. Thomas and Rogers Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** in the above-referenced matter. Please file the original and return the filed stamped copies via our courier.

By copy of this letter, I am serving counsel of record a copy of the same.

With my kindest regards, I am,

Sincerely,

Nancy Y. Stagg

Nancy Y. Stagg
Legal Assistant

/nys
Enclosures
cc: Annie B. Hightower, Esquire (via US Mail and e-mail)
Rita Bragg Cullum, Esquire (via US Mail and e-mail)
Pope Johnson, Esquire (via US Mail and e-mail)
Michael Polk, Esquire (via US Mail and e-mail)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2015 JAN 15 PM 4:42
ANN W. KITCHINGS
PROBATE JUDGE
RICHLAND CO., S.C.

ROBERT J. THOMAS AND ROGERS RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

Robert J. Thomas, Esq. and the law firm of Rogers Townsend & Thomas, PC, submit the following Rule 59(e) Motion to Reconsider the Order Granting Motion for Sanctions dated January 2, 2015.

Procedural Background

Petitioner, as attorney-in-fact and daughter, filed a Motion for Sanctions on January 21, 2014 and a submitted a Memorandum in Support on May 19, 2014. Mr. Thomas and Rogers Townsend and Thomas also filed a Memorandum in Opposition to Petitioner's Motion for Sanctions on May 19, 2014 and a Reply to Petitioner's Memorandum in Support of Motion for Sanctions on May 20, 2014. A hearing was held on May 20, 2014. The Court filed its Order Granting Sanctions on January 2, 2015. Mr. Thomas and Rogers Townsend and Thomas received notice of the Order

by email from Ms. Katie Stanley of the Richland County Probate Court on January 5, 2015. (Attached hereto as **Exhibit A**).

In support of this Motion, the Mr. Thomas and Rogers Townsend and Thomas contend there was error committed because the following facts were not considered or addressed by the Court:

1. The Court overlooked that fact that there are no facts in the record to support an "emergency appointment" of the Temporary Conservator and Temporary Guardian.

2. There are no facts in the record indicating that the Personal Representative brought this action and Petitioner did not have standing to file the Motion for Sanctions in any other capacity.

3. The Court overlooked that fact that both the guardianship and conservatorship actions were filed by Ms. Saine as attorney-in-fact.

4. The Court overlooked that fact that Ms. Saine accepted personal service of the guardianship and conservatorship actions on Ms. Sjoberg's behalf.

5. The Court overlooked that fact that the Petitioner never served process on Mary Beth Sjoberg in either the guardianship or conservatorship actions.

6. The Court overlooked that fact that Robert J. Thomas was the Attorney-in-Fact for Mary Beth Sjoberg and, as such, was entitled to priority appointment under S.C. Code Ann. § 62-5-311.

7. The Court overlooked that fact that Ms. Sjoberg revoked Ms. Saine's appointment as her Attorney-in-Fact, so the Court erred in appointing Ms. Saine to serve as the Temporary Guardian.

8. The Court overlooked that fact that no hearing was held within 30 days after the date of the appointment, May 12, 2011, of a Temporary Guardian and Temporary Conservator, as mandated by S.C. Code Ann. § 63-5-310(D).

9. The Court overlooked that fact that the Proof and Delivery filed by Ms. Caughman did not relate to notice of the initial Guardianship or Conservatorship hearing.

10. Because the Court found as a matter of fact and law that Ms. Sjoberg was incapacitated at all relevant times, the Court erred in concluding that any actions of Mr. Johnson (such as waiving personal service) could be binding on Ms. Sjoberg.

11. The Court overlooked the fact that Petitioner never raised the issue that Mr. Thomas and his firm's non-party appeal was interlocutory and that the appeal was not dismissed or delayed on that ground.

12. The Court overlooked the fact that Mr. Polk was not appointed by the Court to examine personal jurisdiction issues or to investigate procedural defects.

13. The Court misapprehended the fact that Petitioner received notice of the circuit court's order dismissing the appeal as moot by email from Judge Benjamin's law clerk on January 10, 2014.

14. The Court overlooked the fact that Mr. Thomas and his law firm submitted their first and second memoranda in support of their Motion to Reconsider the Order for Release of Client Documents at the request of the Court, so the Court erred in sanctioning Mr. Thomas and his law firm for doing exactly what the Court asked them to do.

15. The Court overlooked the fact that both the Order for Release of Client Documents and the Amended Order for Release of Client Documents carved out an exception for any attorney-client-privileged documents and any work product. Because the will and other estate planning documents were protected by the attorney-client privilege and the work produce doctrine, Mr. Thomas and his firm did not violate the order.

16. The Court overlooked the fact that Mr. Thomas and his firm did not have access to the Court's file before they filed their motion to reconsider and their Memorandum in Support.

17. The Court overlooked the fact that there is nothing in the record to indicate that the Conservator requested Ms. Sjoberg's estate documents for a valid purpose or that there was a time sensitive reason to obtain the documents.

18. The Court failed to apprehend that the law regarding the privileged nature of a living person's estate planning documents and will is complex and undeveloped.

19. The Court failed to apprehend that there was no evidence that Mr. Thomas or his law firm was motivated by any improper purpose or that they stood to gain nothing by challenging the Court's orders.

20. The Court overlooked the Affidavit of Robert P. Wood, in which Mr. Wood certifies that challenging the orders, as required by the Rules of Professional Responsibility, cost Rogers Townsend & Thomas thousands of dollars in attorney time, for no benefit to the firm or to Mr. Thomas.

21. The Court failed to apprehend that Mr. Thomas and his law firm reasonably believed there was a sufficient basis in fact and law to challenge the Court's orders.

22. The Court overlooked the Affidavit of D. Cravens Ravenel in which he opined that the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend and Thomas were made in accordance with the law were not frivolous.

23. The Court overlooked the Affidavit of Robert J. Thomas filed on May 16, 2014 in which he certifies that he has never been sanctioned by a Court, including sanctions under Rule 11 or under the South Carolina Frivolous Civil Proceedings Sanctions Act.

24. The Court overlooked the signature of Warren Powell on his Memorandum in Opposition to Motion for Sanctions, which affirms that there were good grounds to support his memorandum.

25. The Court failed to apprehend that it entered the Order for Release of Client Documents and Amended Order for Release of Client Documents sua sponte and without motion by any party, so the Court erred in concluding that Ms. Saine (who did not file a motion seeking the Will or estate planning documents) was the "prevailing party" as contemplated by the South Carolina Frivolous Civil Proceedings Sanctions Act.

Second, Mr. Thomas and Rogers Townsend & Thomas contend there was error committed because the following legal arguments were not considered by the Court:

26. The Court failed to consider that Petitioner's failure to personally serve Ms. Sjoberg with the summonses and petitions amounted to a violation of Due Process. Thus, the Court never had jurisdiction over Ms. Sjoberg and all of the Court's proceedings were without legal authority.

27. The Court failed to consider that Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct requires an inquiry into the Court's file to determine if the Court's order is authorized by law.

28. Although the Court recited that Ms. Sjoberg instructed Ms. Hightower and Mr. Johnson to cease opposing motions, the Court never explained how one without contractual capacity can do such a thing.

29. The Court failed to consider that it is the law of the case that Mr. Johnson's purported representation of Ms. Sjoberg was void; therefore, Mr. Johnson could not waive personal service.

30. The Court overlooked its own finding that Ms. Sjoberg could not have retained Mr. Johnson; so the logical conclusion is that nothing Ms. Johnson did could have been binding on Ms. Sjoberg, including waiver of personal jurisdiction.

31. The Court failed to explain why Mr. Thomas and his firm's arguments are frivolous. The Court only explained why it disagrees with the merits of the arguments.

32. Multiple Memoranda filed by Mr. Thomas and his firm, which the Court now finds were frivolous, were actually requested by the Probate Court. It is contrary to reason that the Court would request counsel to submit memoranda taking a position on issues that the judge would find frivolous and later conclude that no reasonable lawyer would submit such memoranda. A memorandum requested by the Court cannot not be frivolous as a matter of law.

33. The Court failed to make a determination that the estate planning documents and Will of a living person are protected by the attorney-client privilege and work-product privilege.

34. In making its finding that Mr. Thomas and his firm acted unreasonably, the Court failed to consider additional factors as mandated by the act, including, the complexity of the issues and the gap in the law concerning the issues at hand and whether Respondents previously violated the Act.

35. The Court failed to consider that attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading.

36. The Court failed to consider that the Notice of Appeal and Grounds for Appeal are not subject to sanctions under the Act or Rule 11.

37. The Court failed to consider that appeals from the Probate Court to the Circuit Court are governed by the Probate Code, which does not provide for sanctions related to appeals. Therefore, the Notice and Grounds for Appeal cannot be a basis for awarding sanctions.

Third, Mr. Thomas and his firm contend there was error committed because the following findings were contrary to law:

38. The Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the Guardian and Conservatorship matters. The Court did not have personal jurisdiction over Ms. Sjoberg because she was never personally served with the summons and petition in either matter.

39. It was error for the Court to rely on any discussions between Mr. Johnson and Mr. Thomas, as the same were not material to defective personal service.

40. The Court erred in finding that Petitioner's Motion was timely and that she had ten days from the date of notice of the Circuit Court's order dismissing the appeal to file her Motion. Instead, Petitioner had ten days from the date Petitioner was on notice of the Order Denying Mr. Thomas and Rogers Townsend and Thomas' Motion to Reconsider, which was filed on December 4, 2012.

41. The Court erred in finding that the appeal tolled the time for filing Petitioner's Rule 59 motion for sanctions.

42. The Court erred in concluding that Mr. Thomas and Rogers Townsend and Thomas' non-party appeal was interlocutory.

43. The Court erred in finding that Mr. Thomas and Rogers Townsend and Thomas' appeal stayed the Court's ability to make permanent appointments or otherwise proceed in the administration of the matter.

44. The Court erred in finding that Petitioner received notice of the Circuit Court's order dismissing the appeal as moot on January 11, 2014. There is nothing in the record to support such finding.

45. The Court erred in finding that Ms. Sjoberg impliedly consented to disclosure of her estate planning documents, Will, and estate plan.

Mr. Thomas and Rogers Townsend and Thomas do not waive any arguments previously made in this action and incorporate by reference all previous arguments and memoranda herein.

[signature page to follow]

By signing this Motion to Reconsider, we certify that we have read this motion, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

Respectfully submitted,

Robert P. Wood

Warren C. Powell, Jr. BY CAITLIN HEYWARD, WITH EXPRESS AUTHORITY

Caitlin C. Heyward

BRUNER, POWELL, WALL & MULLINS, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693

Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Exhibit A

Laura Fetner

From: Laura Fetner
Sent: Wednesday, January 07, 2015 1:31 PM
To: Caitlin Heyward
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Attachments: SProbate-KM15010215570.pdf

Importance: High

Hi Caitlin: Notice was received via email from the PC on Monday, 1/5 ☺

From: Warren Powell
Sent: Monday, January 05, 2015 9:28 AM
To: Laura Fetner
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Importance: High

From: Katie Stanley [mailto:StanleyK@rcgov.us]
Sent: Monday, January 05, 2015 8:57 AM
To: Will Britt; Warren Powell; cravenel@brblegal.com; robert.wood@rtt-law.com; rcaughman@sctlawfirm.com; bea@aikenandhightower.com; art@aikenandhightower.com; paulas@sc.rr.com; JLee@sctlawfirm.com
Cc: Lori Elrod
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Importance: High

Dear All,

Please find attached an Order Granting Motion for Sanctions in the Matter of Mary Beth Sjoberg- Case Numbers 2011 GC40 00047 and 2011 GC40 00048. As this Order is 22 pages, the Court will not mail hard copies to everyone. Therefore, certified copies will be issued upon request.

Sincerley,

Katie Stanley
Guardianship/Conservatorship Director
Richland County Probate Court
1701 Main Street Ste 207 (29201)
P O Box 192
Columbia, SC 29202
P-803-576-1962
F-803-576-1983

www.rcgov.us/probate

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Rita DeCarlis, with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 15th day of January 2015, I served **Robert J. Thomas and Rogers Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Annie B. Hightower, Esquire
Aiken & Hightower, PA
2231 Devine Street, Suite 201
Columbia, SC 29205

Rita Bragg Cullum, Esquire
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

Pope Johnson, Esquire
Johnson & Barnette, LLP
PO Drawer 11209
Columbia, SC 29211

Michael Polk, Esquire
Belser & Belser, PA
1901 Main Street, Suite 1550
Columbia, SC 29202

Rita D. DeCarlis

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047

Case No. 2011-GC-40-00048

2015 FEB 27 PM 3:41
RICHLAND COUNTY
PROBATE JUDGE
RICHLAND COUNTY, S.C.

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S MEMORANDUM IN SUPPORT OF RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

This Court granted Petitioner's Motion for Sanction against Robert Thomas and the law firm of Rogers Townsend & Thomas, PC (collectively "RTT") by Order dated January 2, 2015. RTT received said Order on January 5, 2015 and served and filed a Motion to Reconsider on January 15, 2015. RTT, incorporating its prior Memorandum in Opposition to Petitioner's Motion for Sanctions and exhibits attached and/or filed with the Court in support thereof, and without waiving any points made therein, submits this Memorandum in Support of its Rule 59(e) Motion to Reconsider the Order Granting Motion for Sanctions.

Factual Background

This matter originates from sanctions proceedings initiated against a non-party attorney, with no financial interest in the underlying probate proceedings, who sought to protect privileged

communications between him and his former client from an Order of the Court demanding the release of those communications, where there were more than arguable questions about the validity of the Court's Order.

The Court's Order Granting Sanctions arises out of an Order dated July 31, 2012, directing RTT to release all estate planning documents, not limited to final or most recent versions, of its then living client, Mary Beth Sjoberg, to Ms. Saine.[1] After intense investigation and careful consideration of the issues, RTT ultimately determined that the estate planning documents of a living person are privileged, that RTT had a duty not to disclose those documents, and that RTT had a duty to test and, if appropriate, challenge the authority of the Court to enter the Order.

After Mr. Thomas expressed concern that the estate planning documents were privileged, this Court filed an Amended Order for Release of Client Documents on August 24, 2012. Like the Initial Order, the Amended Order directed RTT to release all estate planning of Ms. Sjoberg, not limited to final or most recent versions, but provided that any documents not previously turned over to Ms. Saine instead be turned over to the Probate Court. Both the Initial Order and Amended Order contained exceptions for disclosure of documents protected by the work product doctrine and attorney-client privilege.

[1] The initial Order for Release of Client Documents contained the following language: "That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, *not just final or most recent versions* of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will and Testaments, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or heathcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order." (emphasis added).

On August 30, 2014, RTT filed a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. This Court then requested that RTT submit a memorandum in support of its Motion, one of the filings upon which this Court later relied as a basis for its Order Granting Motion for Sanctions. Adhering to this Court's request, RTT filed a Memorandum in Support of its Motion to Reconsider on September 17, 2012.

In response to RTT's Memorandum in Support, the Court released many documents from its file to RTT on September 25, 2012. Despite the large number of documents released to RTT, nowhere among them was any evidence that the Court had jurisdiction over Ms. Sjoberg. On October 18, 2012, this Court filed an Order Releasing Documents and Protective Order *nunc pro tunc* to September 25, 2012 and requested RTT file a supplemental brief related to its Motion to Reconsider, yet another filing upon which this Court later adopted as basis for its Order Granting Motion for Sanctions. Per this Court's request, RTT filed its Second Memorandum in Support of its Motion to Reconsider on October 25, 2012. This Court ultimately denied RTT's Motion to Reconsider by Order dated December 4, 2012.

Two days later, on December 6, 2012, RTT filed a Notice of Intent to Appeal this Court's Order; however, Ms. Sjoberg died on January, 6, 2014 and before the Circuit Court could rule on the issue. RTT immediately filed Ms. Sjoberg's Will upon learning of her death (as required by S.C. Code Ann. § 62-2-901). RTT's appeal therefore became moot and was dismissed by the Circuit Court on January 10, 2014. This Court then granted Petitioner's Motion for Sanctions against RTT for declining to produce Ms. Sjoberg's estate planning documents before her death.

Argument

I. Petitioner lacked standing to file the Motion for Sanctions.

As a threshold matter, this Court improperly granted Petitioner's Motion for Sanctions because Petitioner lacked standing to seek sanctions against RTT. This Court overlooked the fact that Ms. Saine filed the Motion in her capacity as daughter and attorney-in-fact of Mary Beth Sjoberg after Ms. Sjoberg died. There are no facts in the record indicating that the Personal Representative initiated the present proceedings, and Petitioner did not have standing to file the Motion for Sanctions in any other capacity.

Rule 17 of the South Carolina Rules of Civil Procedure provides "[e]very action shall be prosecuted in the name of the real party in interest." Rule 17 goes on to provide procedures for amending pleadings to name the proper party. The purpose of requiring the real party in interest to prosecute an action is to assure that a defendant is required only to defend an action brought by a proper party and that such an action need be defended only once. Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 169 (1997).

Petitioner is not a real party in interest to these proceedings. Ms. Sjoberg died on January 6, 2014. On January 9, 2014, Ms. Saine was appointed Personal Representative of Ms. Sjoberg's estate. Nevertheless, on January 23, 2014, Ms. Saine filed her Motion for Sanctions in her capacity as attorney-in-fact. However, pursuant to S.C. Code Ann. § 62-5-306 and § 62-5-430, Ms. Saine's authority to act as Temporary Conservator and Temporary Guardian terminated upon Ms. Sjoberg's death. Thus, Ms. Saine did not have standing as attorney-in-fact prior to filing the Motion, a fact this Court acknowledged in its Order Granting Motion for Sanctions. (Order Granting Motion for Sanctions, p. 10).

Furthermore, Petitioner's failure bring the Motion by the real party in interest occurred in the face of a clear understanding of who the proper party is. RTT raised the issue of Petitioner's

lack of standing in its Motion and Memorandum in Opposition to Petitioner's Motion for Sanctions, which was filed on May 5, 2014. (RTT's Memorandum in Opposition to Motion for Sanctions, pp. 15-16). Despite being on notice of RTT's objection, Petitioner never attempted to amend her Motion pursuant to Rule 17 or substitute Ms. Saine in her capacity as Personal Representative as the proper party. Thus, Petitioner's interest in pursuing sanctions in her capacity as Personal Representative was not contemplated from the beginning of these proceedings.

While it is true that Ms. Saine was appointed Personal Representative before the Motion was filed, this Court overlooked the fact that the Motion was never filed in her capacity as such. Simply because Ms. Saine could have brought this Motion in an alternative capacity and chose not to does not cure the procedural defect. Rule 82(a) of the South Carolina Rules of Civil Procedure provides "[t]hese rules shall not be construed to extend or limit the jurisdiction of any court of this State." Because standing is required to invoke jurisdiction of the Court, standing is to be determined at the commencement of the suit. Petitioner as attorney-in-fact did not have standing to invoke the Court's jurisdiction at the commencement of the sanctions proceedings, and the Court cannot substitute a real party in interest for another party if no party with standing has invoked its jurisdiction in the first instance.

II. This Court lacked subject matter jurisdiction over the sanctions proceedings because Petitioner's Motion was untimely.

This Court erred in finding that Petitioner's Motion was timely and that she had ten days from the date of notice of the Circuit Court's order dismissing the appeal to file her Motion. Instead, Petitioner had ten days from the date Petitioner was on notice of the Order Denying RTT's Motion to Reconsider, which was filed on December 4, 2012.

Quoting Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138 (2014) as supporting authority, this Court appropriately acknowledged that motions made pursuant to the FCPSA are post-trial motions and that a party has ten days after the filing of a court order to file a motion pursuant to the Act. (Order Granting Motion for Sanctions, pp. 10-11). However, the Court failed to apprehend that the South Carolina Supreme Court has routinely held that the filing of a notice of appeal does not deprive the lower court of jurisdiction to consider a timely post-trial motion. See Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 161 (2014); Hudson v. Hudson, 290 S.C. 215, 215 (1986). "This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, in a piecemeal fashion." Holmes at 162.

Here, the Court denied RTT's Motion to Reconsider on December 4, 2012, and RTT filed a Notice of Intent to Appeal that decision on December 6, 2012. Pursuant to Holmes, RTT's Notice of Appeal did not toll the time for filing Petitioner's Motion for Sanctions. Petitioner had until December 14, 2012 to file her Motion for Sanctions against RTT. Instead, Petitioner waited until January 23, 2014, over a year later, to file the Motion. Petitioner was on notice of all of the facts that form the basis of her Motion for Sanctions at the time RTT's Motion to Reconsider was denied, and Petitioner's time to file her post-trial motion for sanctions began to run on that date.

In addition, this Court erroneously found that the appeal was interlocutory and that because the appeal stayed the Court's ability to make permanent appointments, Petitioners had until ten days after the appeal was dismissed to file its Motion. That conclusion is contrary to well established law. RTT's appeal was not interlocutory, and whether or not this Court may consider a motion for sanctions has no effect on this Court's power to make permanent

appointments. RTT was never a party to the underlying guardianship and conservator proceedings, and the purpose of the appeal was to determine whether the Court had the legal authority to order the production of privileged documents. The Court also neglected the fact that Petitioner never raised the issue that Mr. Thomas and his firm's non-party appeal was interlocutory and that the appeal was not dismissed or delayed on that ground. RTT could not have waited until receiving notice of a final order on the Petitions for Appointment before appealing this Court's Order denying its Motion to Reconsider. Had RTT done so, RTT's appeal would have been dismissed by the Circuit Court as untimely. Accordingly, the commencement of time for Petitioner to move for sanctions must have been the date of the Order, December 4, 2012.[2]

III. This Court's finding that it maintained personal jurisdiction over Ms. Sjoberg in the guardianship and conservatorship matters was legal error, and the Court failed to identify any reason why RTT's objection to the Order and Amended Order Requesting Release of Client's File was unreasonable.

This Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the guardian and conservatorship matters. The Court overlooked the fact that Ms. Saine filed Petitions in the guardianship and conservatorship actions in her capacity as attorney-in-fact, and then purported to accept service on Ms. Sjoberg's behalf in that same capacity. The Durable Power of Attorney

[2] Nevertheless, this Court calculated Petitioner's ten day deadline to file her Motion to Reconsider from the date the Guardian *ad Litem* received notice of the Circuit Court's Order dismissing the appeal. Even assuming for the sake of argument that was proper, Petitioner's Motion was still untimely. This Court erroneously found that the Guardian *ad Litem* did not receive notice until Saturday, January 11, 2014. There are no facts in the record to support this finding, and an email from Judge Benjamin's law clerk will show that Ms. Hightower actually received notice on Friday, January 10, 2014, the same date the Order Dismissing the Appeal was filed. (Attached hereto as **Exhibit A**). Petitioner did not serve her Motion until January 21, 2014, eleven days after the date of notice and one day beyond the ten-day deadline. Therefore, even if this Court rejects the holding in Holmes, sanctions are not appropriate because this Court never obtained subject matter jurisdiction over the proceedings.

on which Ms. Saine relied did not give her the power to accept service of a lawsuit or defend one on behalf of Ms. Sjoberg. The Court did not have personal jurisdiction over Ms. Sjoberg because (1) she was never personally served with the summonses and petitions and (2) she did not waive service in either matter. Additionally, the Court's appointment of Ms. Saine as Temporary Guardian and Temporary Conservator was improper because Ms. Sjoberg was denied Due Process in both proceedings for the same reasons. Therefore, it was not unreasonable for RTT to challenge the legality of the Court's Order requesting Ms. Sjoberg's estate planning documents on that ground.

Nevertheless, even accepting the Court's determination that jurisdiction was proper, the Court failed to consider that RTT had good grounds to object to the Court's Order Requesting Release of Client Documents, which was well founded in existing law. Apparently recognizing this problem, the Court failed to identify a single reason why RTT's actions were unreasonable. Simply because this Court disagreed with the merits of RTT's position regarding personal jurisdiction is not an appropriate basis for awarding sanctions to Petitioner. The facts and law supporting the merits RTT's objection on the grounds of personal jurisdiction are reiterated below.

A. Temporary Guardianship Proceedings

The Court did not have personal jurisdiction over Ms. Sjoberg in the Temporary Guardianship proceedings because: (1) the Court did not make the necessary preliminary emergency findings pursuant to S.C. Code Ann. § 62-5-310 to justify appointment of a Temporary Guardian without notice to Ms. Sjoberg; (2) there was no notice to Ms. Sjoberg or a hearing held within 30 days of Ms. Saine's appointment as required by S.C. Code Ann § 62-5-

310(D); and (3) Ms. Saine's authority as Temporary Guardian expired within six months of her appointment.

S.C. Code Ann. § 62-5-310 provides as follows:

> (A) If the court makes **emergency preliminary findings** that:
> (1) a physician has certified to the court, orally or in writing, that the person is incapacitated;
> (2) no guardian had been appointed previously; and
> (3) the welfare of the person requires immediate action;
> then the court, with or without petition or notice, may appoint a temporary guardian for a specified period **not to exceed six months** in accordance with the priorities set out in Section 62-5-311.

In addition, S.C. Code Ann § 62-5-310(D) provides, "[i]f a temporary guardian is appointed without petition or notice under this section, **a hearing to review the appointment must be held *after petition and notice* and within thirty days after the appointment of the temporary guardian**" (emphasis added).

In the Order Granting Motion for Sanctions, this Court concluded that S.C. Code Ann. § 62-5-310 "does not require service on the alleged incapacitated person prior to appointing a temporary guardian," suggesting the Court had personal jurisdiction over Ms. Sjoberg in the temporary guardianship action regardless of whether Ms. Sjoberg or her attorney was given notice. (Order Granting Motion for Sanction, p.15). However, the Court overlooked the fact that it had not made the requisite preliminary findings of an emergency. The Order Appointing Temporary Guardian simply provided that an emergency appointment was necessary because Ms. Sjoberg was incapacitated and there was "a need to make immediate heath care decisions." (Order Appointing Temporary Guardian, May 12, 2011, p. 1). The only fact to support the Court's finding was that a doctor opined that Ms. Sjoberg was incapacitated, a finding that would

have struck Ms. Sjoberg as unusual because she was living at home at the time and scored 25 out of 30 points on the Mini-Mental State Examination (MMSF).

Regardless, there were no facts in the record to support an emergency to justify the need to appoint a Temporary Guardian without perfecting service upon Ms. Sjoberg. The Court never identified what important medical decision needed to be made immediately, the State had not started any kind of mental commitment proceeding, and there was no true emergency that would likely result in any immediate or substantial harm to Ms. Sjoberg. In fact, Paragraph 6 of the Petition for Appointment of Guardian asks if it is necessary to appoint a Temporary Guardian for the subject until a hearing could be held on the Petition. That box is checked NO, and an Amended Petition was never filed to request otherwise. (Petition attached hereto as **Exhibit B**).

In its Order Granting Motion for Sanctions, this Court references the cover letter attached to the Petitions that requested the matters be treated as emergency proceedings. (Order Granting Motion for Sanctions, pp. 1-2). However, the cover letter amounts to a flagrant *ex parte* communication with the Court, which apparently had a significant influence on this Court as the Court comments on it in its Order. Nevertheless, the cover letter itself is not part of the record and could not properly be considered by the Court. Petitioner was not willing to put the allegation of any threat of suicide in an affidavit, so the cover letter does not qualify as a "showing" of any fact. Therefore, the notice exception pursuant to S.C. Code Ann. § 62-5-310 did not apply, and Ms. Sjoberg was entitled to notice and a hearing before the Court could obtain jurisdiction over her and legally appoint a Temporary Guardian. Not only was there no personal jurisdiction over Ms. Sjoberg, the Court's appointment of Ms. Saine as Temporary Guardian was also improper because Ms. Sjoberg was denied Due Process when Petitioner failed to serve her with the Summons and Petition for Appointment of Guardian.

What's more, the Court also overlooked that fact that while the law may not require immediate notice to an incapacitated person where the requisite emergency findings are made by the Court, the incapacitated person is still entitled notice and a hearing within 30 days of the appointment of a Temporary Guardian. While an *ex parte* hearing was held on May 9, 2011, it is undisputed that neither Ms. Sjoberg nor her attorney was given notice of it.[3] To suggest that Ms. Sjoberg was provided notice of the May 9, 2011 hearing, this Court erroneously relied on the Proof and Delivery Attorney Rita Caughman filed on June 8, 2011, approximately one month after the initial hearing and the Order appointing Ms. Saine Temporary Guardian and Temporary Conservator was filed. The Proof and Delivery to which this Court refers did not and could relate to notice of the initial hearing. One cannot be given notice of a hearing that has already occurred. It also did not relate to any hearing to take place in the future, but rather personal delivery of the Summons and Petition for Incapacity and Appointment of a Guardian. (Proof and Delivery attached hereto as **Exhibit C**).

Even so, the Proof and Delivery was ineffective because it was served upon Mr. Thomas, who was not Ms. Sjoberg's counsel of record for the purposes of these proceedings. Therefore, because no such notice or hearing to review the appointment of the Temporary Guardian was given as required by S.C. Code Ann. § 62-5-310(D), Ms. Sjoberg was denied Due Process, and the appointment of Ms. Saine as Temporary Guardian was invalid after June 12, 2011.

[3] The Order Appointing Temporary Guardian dated May 16, 2011 also provided that a status hearing be scheduled for no more than forty (40) days from the date of the Order, but did not provide that Ms. Sjoberg would be entitled to any notice, and there is no evidence that such any hearing was held.

Finally, S.C. Code Ann. § 62-5-310(A)(3) limits the time a person appointed Temporary Guardian may serve to six months.[4] Therefore, even assuming the requisite emergency findings were made by the Court, and Ms. Saine's appointment was proper, and Ms. Sjoberg was provided notice and a hearing within 30 days, Ms. Saine's authority as Temporary Guardian expired on November 12, 2011. At the latest, this Court no longer maintained jurisdiction over Ms. Sjoberg after that date because no Permanent Guardian was ever appointed.[5] The first Order for Release of Client Documents was not filed until July 31, 2012, eight months after Ms. Saine's temporary guardianship expired.

B. Temporary Conservatorship Proceedings

This Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the conservatorship matter; the Court did not have personal jurisdiction over Ms. Sjoberg because she was never personally served with the Summons and Petition. It was Ms. Saine who filed the Petition against Ms. Sjoberg and then, amazingly, signed an Acceptance of Service on Ms. Sjoberg's behalf. Ms. Saine's acceptance of service was invalid and without legal effect. The failure to serve Ms. Sjoberg followed by the appointment of a Temporary Conservator over her property deprived Ms. Sjoberg of Due Process.

S.C. Code Ann. § 62-5-405 provides that "[a]fter the filing of the summons and the petition for appointment of a conservator or other protective order, ***the person to be protected***

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[4] The Order Appointing Temporary Guardian also provided the following language: "The appointment of Paula S. Saine as the Temporary Guardian for Mary Beth Moore Sjoberg shall not exceed a period of six (6) months, and shall automatically terminate upon the appointment of a Permanent Guardian."

[5] On November 15, 2011, the Court filed an Order Extending Appointment of Temporary Guardian *nuc pro tunc* to November 11, 2011, which extended the Ms. Saine's appointment as Temporary Guardian 30 days. Even despite no statute authorizing this Court to extend a temporary guardianship, Ms. Saine's authority as Temporary Guardian expired on February 11, 2012, four months prior to the first Order for Release of Client Documents. Ms. Saine's appointment was never extended again and a permanent appointment was never made.

must be personally served with the summons and petition." (emphasis added). Only after service is perfected does the Court retain jurisdiction over the conservatorship proceedings. S.C. Code Ann. § 62-5-402. Furthermore, no statute or rule allows substitute service on an attorney-in-fact. See Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which requires personal service be made by delivery a copy of the Summons and Complaint to an incompetent person personally.

The Durable Power of Attorney that Ms. Saine purported to use to accept service did not give Ms. Saine the power to accept service of a lawsuit or to defend one. Therefore, Ms. Saine's acceptance of service was invalid absent a valid waiver (which there was none for reasons later discussed) by Ms. Sjoberg.

Likewise, the Proof and Delivery Ms. Caughman filed on June 8, 2011 relating the Summons and Petition for Protective Order and Appointment of Conservator was also ineffective to perfect service upon Ms. Sjoberg. (Proof and Delivery attached hereto as **Exhibit D**). That Proof and Delivery indicates that personal delivery was made upon RTT, but not Ms. Sjoberg. RTT did not represent Ms. Sjoberg for purposes of the conservatorship proceedings, and the South Carolina Rules of Civil Procedure requires personal service on the incapacitated person individually anyway. Moreover, by the time the Summons and Petition was delivered to RTT, this Court already appointed Ms. Saine as Temporary Conservator almost a month prior and held a hearing in Ms. Sjoberg's absence regarding the same. At no time did Petitioner attempt to personally serve Ms. Sjoberg. As such, this Court did not have jurisdiction over Ms. Sjoberg in connection with the conservatorship proceedings when Ms. Saine was appointed Temporary Conservator or any time thereafter.

C. Ms. Sjoberg did not waive service or notice of either the guardianship or conservatorship proceedings.

This Court apparently concluded that Ms. Sjoberg waived her right to personal service for the following reasons: (1) RTT should have affirmatively told Attorney Rita Caughman that the firm could not accept service of process on behalf of Ms. Sjoberg; (2) Mr. Thomas chose not to suggest to Attorney Pope Johnson that he should challenge the issue of personal jurisdiction in a responsive pleading or under Rule 12; (3) Attorney Pope Johnson did not challenge personal jurisdiction on Ms. Sjoberg's behalf; and (4) Attorney Michael Polk and Attorney Bea Hightower did not challenge personal jurisdiction because they concluded it would not be in Ms. Sjoberg's best interest to begin the proceedings again. Notably, the Order omits the fact that Ms. Sjoberg was never personally served.

Waiver of notice of a hearing by the person to be protected is not effective unless she attends the hearing or unless her attorney gives notice of the waiver. S.C. Code Ann. § 62-5-405(b).

As a threshold matter, Mr. Thomas did not have a duty to tell Ms. Caughman anything. Rather, it was Ms. Caughman's duty to serve Ms. Sjoberg properly, and these proceedings initiated by her own client are a direct result of Ms. Caughman's failure to do so. It was also error for the Court to rely on any discussions between Mr. Johnson and Mr. Thomas, as the same were not material to defective personal service. This Court specifically held that Mr. Thomas was not Ms. Sjoberg's counsel of record or an interested party to this matter. (Order Releasing Documents and Protective Order, October 18, 2012, p. 1, FN 1). Mr. Thomas only represented Ms. Sjoberg for the purpose of executing her Will. Because Mr. Thomas was not Ms. Sjoberg's lawyer, Mr. Thomas did not owe any duty to Ms. Sjoberg to point out any procedural defects to

Mr. Johnson and suggest to him how to defend this case. The fact that Mr. Johnson's fee statement submitted to the Court[6] suggested that Mr. Thomas was actively involved in the case or that Mr. Thomas referred Ms. Sjoberg to Mr. Johnson is immaterial to the fact that Mr. Thomas owed no duty to advise Mr. Johnson. To the extent the Court relied on these facts in determining whether or not the Court maintained personal jurisdiction over Ms. Sjoberg, the Court was in error.

Next, the Court overlooked its own finding that Ms. Sjoberg, allegedly, did not have the capacity to retain Mr. Johnson. So the logical conclusion is that nothing Ms. Johnson did could have been binding on Ms. Sjoberg, including waiver of personal jurisdiction. The Court found as a matter of fact and law that Ms. Sjoberg was incapacitated at all relevant times, and it is the law of the case that Mr. Johnson's purported representation of Ms. Sjoberg was "void"; therefore, Mr. Johnson could not waive personal service as a matter of law. Even if Mr. Johnson had raised the procedural issues in his Answer, which was ultimately stricken, or as otherwise provided in Rule 12, those objections would have also been void and stricken by the Court. Neither Mr. Thomas nor Mr. Johnson could waive the defense of lack of personal jurisdiction on Ms. Sjoberg's behalf because neither represented her in this matter.

The Court also erred in relying on Mr. Polk and Ms. Hightower's conclusion that it would not be in Ms. Sjoberg's best interest to begin the proceedings again to imply that personal service was waived on Ms. Sjoberg's behalf. Mr. Polk was not appointed by the Court to examine personal jurisdiction issues or to investigate procedural defects, nor would it be logical for the Court to do so. It defies reason that a Court would appoint an attorney on a person's

[6] RTT will also note that Mr. Johnson's fee affidavit was not a part of the record furnished to RTT in response to RTT's Petition for Writ of Mandamus or Certiorari or part of the record that was furnished to Mr. Wood. Therefore, this Court's Order contains findings that are not supported by the record.

behalf to determine whether the Court has jurisdiction over them, when a negative answer would render the appointment itself void. Nevertheless, Mr. Polk's appointment was without effect as the original service of Ms. Sjoberg was inadequate; therefore, Mr. Polk's failure to object to personal jurisdiction could not amount to waiver of proper service that was binding on Ms. Sjoberg. As explained below, to hold otherwise would violate Due Process.

D. The Court's Order was invalid because the temporary guardianship and conservatorship proceedings and appointments violated Due Process.

The Court failed to consider that Petitioner's failure to personally serve Ms. Sjoberg with the summonses and petitions for both the guardianship and conservatorship proceedings amounted to a violation of Due Process.

The essence of procedural due process is that before any decree or order may affect a person's rights as to life, liberty or property, the person whose rights are affected is entitled to notification of a hearing and an opportunity to be heard before an impartial tribunal. Tall Tower, Inc. v. South Carolina Procurement Review Panel, 294 S.C. 225, 233 (1987); Sabella v. South Carolina Alcoholic Beverage Control Comm'n, 289 S.C. 400, 402, (Ct. App. 1986); State v. Brown, 178 S.C. 294, 182 S. E. 838 (S.C. 1935), appeal dismissed, 298 U.S. 639 (1936); see also Joy v. Daniels, 479 F. 2d 1236 (4th Cir. 1973).

In Webster v. Clanton, 259 S.C 387, 391 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. There, the Court held:

> The order of April 22, not appealed from, was clearly void, and of no effect whatsoever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be

> heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Likewise, Due Process is not accorded to a party simply because a representative of that party who is not of the party's own choosing speaks on the party's behalf. Sabella v. South Carolina Alcoholic Beverage Control Comm'n, 289 S. C. 400, 402, (Ct. App. 1986); In re Nash, 799 So.2d 1271 (2001). In Sabella, an attorney for the Alcoholic Beverage Control Commission argued on behalf of parties to whom notice of a hearing was not given. The court held that these parties did not receive the required notice "and [therefore] were denied their [own] day in court." Id.

Similarly, the Third Circuit Court of Appeals held a court-appointed attorney could not accept service or act on behalf of a party to a proceeding where service of process was not tendered to the party herself. In re Nash, 799 So.2d 1271, 1273 (2001). There, a curator was appointed by the trial court to take care of respondent's interests. Id. at 1271. A judgment of interdiction was entered by the court, stripping the Respondent of her legal rights. Id. The petitioner never perfected service upon the respondent. Id. The court ultimately held that because service was not personal as to the respondent herself, the appointment of the curator was premature and without effect, and the curator's failure to object to the sufficiency of service of process did not result in a waiver. Id. at 1273. This is because the law "envisions an initial service of process on the defendant and an opportunity for her to retain counsel of her choice and to answer the petition." Id.

In regards to the guardianship proceedings, even assuming S.C. Code Ann. § 62-5-310 did not require personal service on Ms. Sjoberg, the law itself, at least as applied here, violates the fundamental principals of Due Process. Ms. Sjoberg was also denied Due Process when she

was not provided notice and hearing to review the appointment of the Temporary Guardian within 30 days. As to both the guardianship and conservatorship matters, pursuant to In re Nash, no action by Mr. Polk cured the procedural defect or could be binding on Ms. Sjoberg such that this Court properly obtained jurisdiction over the proceedings. Thus, the Court never had jurisdiction over Ms. Sjoberg, and all of the Court's proceedings concerning Ms. Sjoberg were without legal authority.

IV. Because the Will and other estate planning documents were protected by the attorney-client privilege and the work product doctrine, Mr. Thomas and his firm did not violate the Order and Amended Order for Release of Client Documents.

Because Ms. Sjoberg's Will and other estate planning documents were protected by the attorney-client privilege and the work product doctrine, RTT did not violate any order of this Court; therefore, sanctions were inappropriately granted.

Here, the Court failed to make a determination that the estate planning documents and will of a living person are protected by the attorney-client privilege and work product doctrine. Instead, the Court highlighted SCRPC 1.6 regarding confidentiality and found RTT had informed consent from Ms. Sjoberg to share the documents with Ms. Saine. (Order Granting Motion for Sanctions, p. 13, January 2, 2015). This finding was based on the following: (1) Mr. Thomas provided a copy of Ms. Sjoberg's executed Will dated November 12, 2010 to Ms. Saine in January of 2011; (2) it was the same Will in effect at the time of Ms. Sjoberg's death; (3) Ms. Sjoberg never executed a subsequent Will; and (4) there was "no evidence [Ms. Sjoberg] had ever withdrawn the informed consent she had previously given." Id. This Court concluded that "[a]t the very least, Robert Thomas and RTT should have notified Ms. Saine that she was already in possession of a copy of Ms. Sjoberg's most recent Will or the firm should have turned over the documents as requested by Ms. Saine and ordered by this Court." Id.

A person's estate plan is highly personal and confidential. The fact Ms. Saine was privy to a copy of a Ms. Sjoberg's executed Will and prior drafts of the Will, and that she met with Mr. Thomas to discuss the Will in the past did not entitle Ms. Saine to know whether or not Ms. Sjoberg later decided to make changes to her estate plan or not. Nor did it amount to informed consent. ***It was the very fact that Ms. Sjoberg did not change her Will that was the confidential information protected by the attorney-client privilege.*** This can be emphasized by this Court's own finding that while Ms. Sjoberg did not have the capacity to contract with Pope Johnson, she did have the capacity to make a new Will or codicil. (Order Granting Motion for Sanction, p. 3). Providing a copy of the executed Will and informing Ms. Saine that she was already in possession of Ms. Sjoberg's most recent Will would have been a breach of the privilege. Therefore, RTT was exercising its legal and ethical obligations by challenging the Court's Order requiring the release of Ms. Sjoberg's estate planning documents.

In support of the notion that RTT should have produced the requested documents to Ms. Saine or to the Court, the Court noted that the law requires a conservator and the court to take into account any known estate plan of the protected person. However, the Probate Code requires a conservator to take into account the estate plan of an incapacitated person for the purpose of making gifts in accordance with the plan, paying taxes, and the like. S.C. Code Ann. § 62-5-427.[7] Here, no such facts exist. Petitioner does not argue and the Court does not find that gifts needed to be made, taxes paid, or any such reason requiring Ms. Sjoberg's Will.

[7] "In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of Section 62-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated." S.C. Code Ann. § 62-5-427.

While Rule 1.6 provides that the attorney's duty of confidentially may be overridden by court order, the Rule simply ***permits*** an attorney to make the disclosure, but does not ***require*** it. Should an attorney decide to make a disclosure of confidential and privileged information pursuant to a court order, Rule 1.6 provides it should be made in a manner that limits access of the information to the person or tribunal having a need to know. However, it was within Mr. Thomas' discretion to decide not to do so. But moreover, it was his duty to ascertain whether the orders requiring production are lawful, valid orders.

The court in In re Guardianship of York, 44 Wn. App. 547, 552 (Wash. Ct. App. 1986), addressed this very issue. There, the Washington Court of Appeals reversed the trial court's order requiring the ward's attorney to produce a copy of the will to the guardian. Id. The court based its holding in part on the attorney-client privilege. The court held that an attorney may not disclose his living client's will prior to their death. The court concluded that even though the Washington Rules of Professional Conduct allow an attorney to disclose privileged information pursuant to a court order, "such compulsion must be used sparingly." Id.

Finally, RTT did comply with the Court's order to the extent it did not require them to disclose privileged information. The Initial Order and Amended Order carved out an exception for any privileged documents. Both Orders contained a broad demand for all estate planning documents, including any unexecuted documents. RTT promptly handed over the non-privileged documents relating to the rental properties. As to the remainder of the documents requested, RTT determined those stemmed from a good faith and reasonable assertion of privilege. Because the order provided an exception for privileged information, RTT could not have violated any of the terms of the Order.

V. **Sanctions against RTT are inappropriate because this Court misapplied the standard for sanctions under Rule 11 and the Act, failed to consider additional factors as mandated by the Act, failed to apprehend that RTT did not continue to demand the Probate Court's file after the file was already in hand, and failed to identify any reason why continuing to object to the Order after RTT received the Court's file was unreasonable.**

The filings this Court identified as frivolous cannot properly form a basis for sanctions. The filings on which this Court relied are listed as follows:

- 8/30/12- RRT's Motion to Reconsider Pending Review of Court's File
- 9/17/12- RTT's Summons and Petition for Writ of Mandamus or Certiorari requesting release of the Probate Court's file
- 9/17/12- RTT's Memo in Support of Motion to Reconsider and Claim of Privilege Pending Review of the Court's File
- 10/25/12- RTT's Second Memorandum in Support of Motion to Reconsider its Motion to Reconsider the Court's Order and Amended Order for Release of Client Documents
- 12/11/12- RTT's Return to Motion to Dismiss informing the Circuit Court that RTT's 9/17/12 Petition was moot due to this Court releasing the requested documents
- 1/17/13- RTT's Grounds for Appeal relating to this Court's denial of RTT's motions to reconsider the Order and Amended Order for Release of Client Documents

This Court found the above filings were unreasonable for two reasons: (1) it was frivolous for RTT "to continue to pursue the matter of demanding that they receive the Guardianship and Conservatorship files, even after they already had the files in hand"; and (2) once RTT had the Guardianship and Conservatorship files in hand, it was frivolous for RTT "to continue to pursue the issue of contesting the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Sjoberg's client records." (Order Granting Motion for Sanctions, p. 20).

This Court misapplied the standard for granting sanctions under Rule 11 and the Act, and the Court failed to consider certain factors as mandated by the Act. Further, none of the above filings were frivolous. RTT did not continue to demand the Court's file after it had the file in

hand, and even after RTT received it, RTT's challenge as to the validity of the Order was not only appropriate, but ethically required.

A. This Court misapplied the standard for awarding sanctions under Rule 11 and the Act.

Because this Court failed to apprehend the correct standard for granting sanctions under Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, Petitioner's Motion for Sanctions against RTT was improperly granted.

The South Carolina Rules of Civil Procedure are based on the Federal Rules, "where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." Gardner v. Newsome Chevrolet-Buick Inc., 304 S.C. 328, 330 (1991). Under Federal Rule 11, the phrase "good ground to support" means that there is a requirement of some pre-filing inquiry into both the facts and the law before filing a pleading with the court. The standard is one of reasonableness under the circumstances. See Rule 11, FRCP, notes. The claims or legal contentions asserted by parties must be warranted by existing law or by a non-frivolous argument for a change in existing law.

Furthermore, Rule 11 "is intended only for exceptional circumstances" and, as is the case under the Act, "Rule 11 sanctions awarding counsel fees do not automatically or usually follow an adverse judgment or ruling." Gaiardo v. Ethyl Corp., 835 F.2d 479, 483 (3rd Cir. 1987). Rather, "[s]ubstantially more is required." Id. See also *5A* Wright & Miller, *Federal Practice and Procedure: Civil 2d §* 1335 at 88 (observing that the fact that a claim has been "dismissed for legal insufficiency or does not present a triable issue does not necessarily mean that a sanction is appropriate."). Thus, Court's mere disagreement with the merits of RTT's arguments is insufficient to survive the high standard that must be satisfied before sanctions may be

awarded. Brubaker v. City of Richmond, 943 F.2d 1363, 1377 (4th Cir. 1991) ("Rule 11 does not require that a judge or jury agree with a plaintiff's allegation.").

This Court examined the merits of RTT's privilege and personal jurisdiction arguments in detail, but did not make a determination as to whether RTT acted unreasonably in making the arguments. As an initial matter, the fact that this Court denied RTT's motions to reconsider and RTT's appeal was dismissed as moot does not provide an independent basis to award sanctions under Rule 11 or the Act. The issue of whether the Court had jurisdiction or authority to order the release of confidential information was never ruled on by the Circuit Court. Regardless, simply because this Court, or any court for that matter, disagrees with RTT's legal argument does not make RTT's legal position unreasonable. If that were the case, then every motion that is denied is unreasonable and subject to sanctions. The standard for awarding sanctions under Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act requires a much greater threshold, and the Court never addressed those standards.

Here, after a thorough investigation of the facts and the law, RTT determined that the estate planning documents the Court ordered to be released were protected by the attorney-client privilege and that, in any event, the Probate Court lacked personal jurisdiction as to Ms. Sjoberg. RTT took extraordinary efforts to carefully research the current state of the law directly at issue, but also development of the law, development of comparable law, and secondary materials. RTT carefully and fully briefed the grounds of its argument for the Court. RTT employed the services of an expert to render an opinion and submit an affidavit as to whether or not producing the Will would amount to a violation of the attorney-client privilege. Finally, in its Memorandum in Opposition to Petitioner's Motion for Sanctions, RTT again explained to the Court in detail the

purpose for each motion, memoranda, and the Notice and Grounds for Appeal as well as the history of the dispute that made it reasonable to file them at the time.

While there is no South Carolina case on point, other states have directly addressed this complicated issue, concluding that a court lacks the authority to either (1) generally compel the production of the will of a living testator or (2) order a will be turned over to a guardian or conservator. See e.g. In re Guardianship of York, 44 Wn. App. 547, 552 (Wash. Ct. App. 1986); In Re Conservatorship of Du Nah, 106 Cal. App. 3d 517 (Cal. App. 2d Dist. 1980); Baumann v. Willis, 721 S.W.2d 535 (Tex. App. 1986).

As such, RTT genuinely believed it had a valid claim of privilege under existing law or, at the very least, a valid argument for the extension of existing law. The Court failed to identify any reason, other than disagreement with the merits of RTT's position regarding personal jurisdiction and privilege, to support its finding that RTT acted unreasonably. The appeal to determine the same was ended by Ms. Sjoberg's death. Therefore, RTT's objection to the validity of the Order and Amended Order on the basis of privilege was not frivolous.

B. The Court failed to consider additional factors as mandated by the Act.

In finding that Mr. Thomas and his firm acted unreasonably, this Court failed to consider additional factors as mandated by the Act, including but not limited to, the complexity of the issues and the gap in the law concerning the issues at hand and previous violations of the Act or Rule 11.

The South Carolina Civil Proceedings Sanctions Act sets forth a list of factors the Court must consider in its decision to award sanctions. The Act provides as follows:

> (E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court **shall** take into account:
>
> (1) the number of parties;

(2) the complexity of the claims and defenses;
(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
(5) previous violations of this section;
(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
(7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court **shall** consider previous violations of the provisions of this section.

S.C. Code Ann. 15-36-10(E)-(F) (emphasis added).

Here, the Court failed to apprehend that the law regarding the confidential and privileged nature of a living person's estate planning documents and will is complex and undeveloped, and the Court failed to appreciate the Affidavit of Robert J. Thomas, filed on May 16, 2014 in which he certifies that he has never been sanctioned by a Court, including sanctions under Rule 11 or under the South Carolina Frivolous Civil Proceedings Sanctions Act, both of which this Court is required to consider. In fact, the legislature placed such great importance on the latter that it is listed as a mandatory consideration two separate times in the Act itself.

Even if the Court disagrees with RTT that disclosure of a prior will amounts to an implied waiver of a person's entire future estate plan, that area of the law is novel, and RTT had good grounds to object on that basis and argue in good faith for a modification or extension of existing law in this unique context. There is no South Carolina case law that directly addresses the privilege of a living person's estate planning documents, much less waiver or the revocation

of waiver of the same, when the Respondent was not personally served with the initiating Summons and Petition. However, existing case law in other states as mentioned previously suggests a strong argument in favor of RTT's challenge of the legality of the Court's Order.

In addition, the Court overlooked the Affidavit of D. Cravens Ravenel, in which he opined that the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend and Thomas were made in accordance with the law were not frivolous. Likewise, the Court overlooked the signature of Warren Powell on his Memorandum in Opposition to Motion for Sanctions, which affirms that there were good grounds to support each of RTT's filings. Nowhere in the Order Granting the Motion for Sanctions does the Court acknowledge that Mr. Thomas and his law firm reasonably believed there was a sufficient basis in fact and law to challenge the Court's orders. Instead, the Court merely explained the reasons why the Court disagreed with RTT's position on the merits.

C. This Court failed to apprehend the fact that RTT did not continue to demand the guardianship and conservatorship files after they had those files in hand.

This Court failed to apprehend the fact that RTT did not continue to demand the guardianship and conservatorship files after they had those files in hand. As such, RTT's first Motion to Reconsider, Summons and Petition for Writ of Mandamus, and Return to Motion to Dismiss cannot be a proper basis for awarding sanctions on that ground.

The Court neglected the fact that Mr. Thomas and his firm did not have access to the Court's file before they filed their Motion to Reconsider on August 30, 2012 or their Memorandum in Support on September 17, 2012.[8] Likewise, the Summons and Petition for Writ

[8] As noted in RTT's Memorandum in Opposition to Petitioner's Motion for Sanctions, Judge Belton forward Mr. Wood some documents from the Court's files on September 10, 2012, but indicated in a follow up email that RTT should contact her judicial clerk, Mr. Spitz, or the director of the Guardian and Conservatorship Division, Ms. Lewis, if additional documents were

of Mandamus or Certiorari was not frivolous because it was also filed before the Court turned over its file to RTT. (Petition attached hereto as **Exhibit E**). RTT's Petition was proper in light of Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct, which requires an inquiry into the Court's file to determine if the Court's order is authorized by law. RTT filed the Petition on September 19, 2012, and this Court acknowledged that RTT did not receive the Court's file until September 25, 2012. (Order Granting Motion for Sanctions, p.5).

Furthermore, RTT's Return to Motion to Dismiss notifying the Circuit Court that its Petition was moot due to this Court releasing the requested documents was also not frivolous. (Return attached hereto as **Exhibit F**). RTT's Return was the opposite of a demand for the Court's file, as it was effectively a voluntary dismissal of RTT's own Petition. RTT filed the Return only after RTT obtained the requested file. This Court failed to explain how the Return was so improper as to warrant sanctions against RTT. However, it should be noted that Petitioner never sought sanctions on the basis of RTT's Summons and Petition for Writ of Mandamus or Certiorari or RTT's Return to Motion to Dismiss in her Motion or Memorandum in Support of Petitioner's Motion for Sanctions. Petitioner never alleged that RTT acted unreasonably in allegedly continuing to pursue the Court's file after it was already in hand. This ground was never before the Court, but was addressed *sua sponte* in its Order Granting Motion for Sanctions.

---

needed. Mr. Wood did need additional documents and sent several emails to Mr. Spitz and Ms. Lewis requesting those, but Mr. Wood never received them. It was not until the Court released the file on September 25th that Mr. Wood had all of the documents necessary to properly investigate the validity of the Court's Order and Amended Order for Release of Client Documents.

D. RTT did not act unreasonably in continuing to contest the original Order and Amended Order directing RTT to release Ms. Sjoberg's estate planning documents after RTT received the Court's file.

First, RTT's Motion to Reconsider Pending Review of the Court's File, which was filed before receipt of the Court's file, was proper because RTT had a duty to investigate the file to determine the legality of the Court's Order. This was the first formal claim of privilege made by RTT, which RTT had every right to assert. As to RTT's second Motion to Reconsider, which was filed after RTT received the Probate Court's file, RTT's objection was reasonable given the status of the law around the country supporting RTT's position regarding privilege and given the highly complex issue involving what effect lack of proper service and notice has on a Court's authority to compel a non-party to produce privileged documents. This Court also overlooked the fact that both the Order for Release of Client Documents and the Amended Order for Release of Client Documents carved out an exception for any attorney-client privileged documents and any work product. And because the Will and other estate planning documents were protected by the attorney-client privilege and the work produce doctrine, Mr. Thomas and his firm did not violate the Order.

The easier path for RTT, a nonparty, would have been to simply produce the documents. Ms. Sjoberg was unable to represent herself, and it was unlikely anyone would have challenged RTT's breach of the privilege. Furthermore, nobody was paying RTT to assert Ms. Sjoberg's privilege. There was nothing in it for RTT to assert the privilege other than its desire to comply with the Rules of Professional Conduct. And the Court never acknowledges that fact in its Order Granting Motion for Sanctions.

However, being carefully observant of his ethical obligations, Mr. Thomas took an approach that would be undesirable to many lawyers, considering the time and expense to litigate

the issue with little prospect of payment. The decision to challenge an order of the Court was not made for any improper purpose or out of a desire to prolong proceedings. This Court overlooked the fact that Mr. Thomas and RTT were not parties to the probate proceedings and had nothing to gain from withholding Ms. Sjoberg's estate documents. To the contrary, as provided in the Affidavit of Robert P. Wood, Mr. Thomas and his firm have expended a considerable sum of non-billable hours defending that decision at no benefit to the firm. As a matter of public policy, this Court must carefully consider whether a law firm with no stake in the outcome of a case, other than its professional obligations, should *ever* be sanctioned for questioning a court's right to order the production of privileged information.

Second, a memorandum requested by the Court cannot not be frivolous as a matter of law. Two of the filings, RTT's First and Second Memoranda in Support of its Motion to Reconsider, which this Court now finds frivolous, were filed upon the request of this Court. It is contrary to reason that the Court would request counsel to submit memoranda taking a position on issues that the Court would find frivolous and later conclude that no reasonable lawyer would submit such memoranda. Therefore, this Court erred in sanctioning Mr. Thomas and his law firm for doing exactly what the Court asked them to do. This dynamic puts RTT in the position of waiving its assertion of the privilege by disobeying the Court's instructions to file a memorandum, or, in the alternative, complying with the Court's instructions by asserting the privilege in a memorandum and suffer an order imposing sanctions for doing so.

Finally, the Grounds for Appeal is not subject to sanctions under the Act or Rule 11. This Court failed to consider that appeals from the Probate Court to the Circuit Court are

governed by the Probate Code, which does not provide for sanctions related to appeals.[9] Therefore, the Notice and Grounds for Appeal cannot be a basis for awarding sanctions. This issue was raised in RTT's Motion in Opposition to Motion for Sanctions, yet the Court wholly ignored this argument and failed to even address it in its Order Granting Motion Sanctions. Nevertheless, the Grounds for Appeal was not frivolous because RTT had a good faith argument grounded in existing law that the estate planning documents of a living person are privileged and should not be revealed to a court that does not have authority to order them to be. The Grounds for Appeal were filed before Ms. Sjoberg's death, so the issue was not yet moot.

VI. Attorneys' fees are not appropriate because Petitioner is not a prevailing party.

The Court failed to consider that attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading. S.C. Code Ann. § 15-36-10(G)(1) provides sanctions may include: "an order for the party represented by an

[9] In RTT's Memorandum in Opposition to Motion for Sanctions, RTT explained in detail why the Notice and Grounds for Appeal are not subject to sanctions under Rule 11 or the Act. RTT noted that S.C. Code Ann. § 56-36-10(A)(4) specifically refers to "a civil or administrative action" and the filing of a frivolous pleading, motion or document." The points in time in which the Court should determine if a claim or defense is frivolous are enumerated, including "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by directed verdict, summary judgment, or judgment notwithstanding the verdict..." S.C. Code Ann. § 56-36-10(C)(1). Nowhere in the statute does the Act authorize sanctions in appellate court maters or relating in any way to appeals. Similarly, Rule 11, like all South Carolina Rules of Civil Procedure, is applicable to matters in "the Court of Common Pleas and...all South Carolina courts in suits of a civil nature whether cognizable as cases at law or in equity, subject to certain exceptions contained in Rule 81." Rule 81 provides "the rules shall apply to every trial court of civil jurisdiction within the state and shall apply insofar as practicable in magistrates' courts, probate courts and family courts to the extent they are not inconsistent with the statutes and rules governing those courts." Conversely, the SC Appellate rules specify the procedures for appeals, petitions and motions before the Supreme Court and the Court of Appeals. They also contain rules governing conduct, discipline, etc. Rule 74 SCRCP makes clear that the appeals from inferior courts or administrative agencies are governed by statutes providing for such appeals. Appeals from the probate court to the circuit court are governed by the probate code, which does not provide sanctions related to appeals. S.C. Code Ann. § 62-1-308.

attorney or pro se litigant to pay the reasonable costs and attorney's fees of the *prevailing party* under a motion pursuant to this section." (emphasis added).

Here, the Court entered the Order for Release of Client Documents and Amended Order for Release of Client Documents *sua sponte* and without motion by any party, so the Court erred in concluding that Ms. Saine (who did not file a motion seeking the Will or estate planning documents) was the "prevailing party" as contemplated by the South Carolina Frivolous Civil Proceedings Sanctions Act.

Moreover, even if Petitioner made a motion requesting the release of the documents, the issue was never ruled upon by the Circuit Court because Ms. Sjoberg died, rendering the appeal moot. The Will did not arrive at the Court by virtue of any order of the Probate Court, but instead by virtue of S.C. Code Ann. § 62-2-901. Because there was no adverse ruling, Petitioner cannot be a prevailing party in this instance.

In regards to any award of attorneys' fees, any fees should be examined in light of whoever is responsible for prosecuting the case by initiating it without having obtained personal jurisdiction. Therefore, RTT respectfully requests this Court reconsider Petitioner's request for attorneys' fees.

Conclusion

Wherefore, RTT respectfully requests the Court reconsider its Order Granting Motion for Sanctions dated January 2, 2015. The undersigned affirms, pursuant to SCRCP 11(a), that consultation with opposing counsel is not required.

By signing this Memorandum in Support of RTT's Rule 59(e) Motion to Reconsider, we certify that we have read this motion, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

Respectfully submitted,

Robert P. Wood

Warren C. Powell BY CAITLIN C. HEYWARD WITH AUTHORITY

Warren C. Powell, Jr.

Caitlin C. Heyward

Caitlin C. Heyward

BRUNER, POWELL, WALL & MULLINS, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693

Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Columbia, SC

February 27, 2015

EXHIBIT A

Caitlin Heyward

From: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson) [dbenjaminlc@sccourts.org]
Sent: Friday, January 10, 2014 12:15 PM
To: alicia@aikenandhightower.com; rcaughman@sct.lawfirm.com; Robert P. Wood; mike@belserpa.com
Cc: parkerg@rcgov.us
Subject: Mary Beth Moore Sjoberg -Form 4
Attachments: Sjoberg Filed Form 4.pdf

Good afternoon,

I hope this correspondence finds you all well. A Form 4 has been filed in this case, and it has been attached to the body of this e-mail for your convenience.

Thanks,

Ashley Wheeling-Goodson
Law Clerk for The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP408088

Rogers Townsend & Thomas, PC

Paula Saine, As the Attorney-In-Fact For Mary Beth Moore Sjoberg and as the Daughter of Mary Beth Moore Sjoberg and A. Bea Hightower, As Guardian ad Litem for Mary Beth Sjoberg

APPELLANT

RESPONDENT

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other _____ ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award.

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: This appeal is dismissed because the appeal is moot.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

JEANETTE W. WALKER, C.P. & G.S. RICHLAND COUNTY FILED 2014 JAN 10 PM 11 38

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2161 Date 1-10-14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Robert Wood
ATTORNEY(S) FOR THE APPELLANT

A. Bea Hightower, Rita Bragg Caughman, and Michael Polk
ATTORNEY(S) FOR THE RESPONDENT(S)

Court Reporter Debbie McCurdy

Clerk of Court _____

SCRCP Form 4C (10/2011)

EXHIBIT B

COPY

FILED

11 APR 22 PM 3:56

PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

SUMMONS

PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

2011 GC40 00048

PETITIONER,)

v.)

MARY BETH MOORE SJOBERG,)
AND/OR HER GUARDIAN-AD-LITEM,)
AND PAULA S. SAINE)

RESPONDENTS.)

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

RTT SJOBERG 000188

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT

FILED

11 APR 22 PM 3:56

RICHLAND COUNTY, S.C.

PETITION FOR FINDING

THE MATTER OF
MARY BETH MOORE SJOBERG

CASE NUMBER: 2011 GC40 00048

☒ INCAPACITY
☒ APPOINTMENT OF
☒ GUARDIAN
☐ SUCCESSOR GUARDIAN

Applicant/Petitioner: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone: 803-261-4566

I. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information – Allegedly Incapacitated Person

Name: Mary Beth Moore Sjoberg Age: 81
Date of Birth 09/23/1929
Address: 3825 Linwood Road
City/State/Zip: Columbia, SC 29205
Telephone: 803-782-4766

To my knowledge, above named ☒ *DOES* ☐ *DOES NOT* have a health care power of attorney (See attached as Exhibit "A").

To my knowledge, above named ☐ *DOES* ☒ *DOES NOT* have a living will (Declaration of a Desire for a Natural Death.)

3. Venue for this proceeding in this county because the subject:

☒ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of allegedly incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Incapacitated Person
Paula S. Saine	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1993	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	08/28/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild
(use additional sheet if necessary)			

5. The nature and degree of incapacity is as follows:

Memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

II. COMPLETE THIS SECTION IF APPOINTMENT IS SOUGHT.

1. Is it your belief that the allegedly incapacitated person is in need of a guardian/successor guardian as a means of providing continuing care and supervision of the person of said incapacitated person?
☒ YES ☐ NO If no, please explain.

2. The extent to which the guardian should be permitted to give consents or approvals that may be necessary to enable the allegedly incapacitated person to receive medical or other professional care, counsel, treatment or services is as follows:

Full extent, consistent with the allegedly incapacitated person's executed health care power of attorney. See attached as Exhibit "A".

3. The nature and extent of the care, assistance, protection, or supervision which is necessary or desirable for the allegedly incapacitated person under the circumstances is as follows:

Full extent, consistent with the allegedly incapacitated person's executed durable power of attorney. See attached as Exhibit "B".

4. Has a guardian appointed by a Will accepted such appointment?
☒ NO ☐ YES If yes, please explain.
N/A

5. I request the appointment of:

Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
(H): 803-261-4666
E-mail: paulas@sc.rr.com

whose priority for appointment as guardian for the subject is as follows:

☐ a person nominated to serve as guardian by the allegedly incapacitated person
☒ an attorney-in-fact appointed by the allegedly incapacitated person pursuant to Section 62-5-501
☐ spouse of the allegedly incapacitated person
☐ adult child of the allegedly incapacitated person
☐ parent of the allegedly incapacitated person
☐ other relative of the allegedly incapacitated person (Specify): ____
☐ nominated by the person who is caring for the allegedly incapacitated person or paying benefits to him/her
☐ Other (specify) ____

6. Is it necessary to appoint a temporary guardian for the subject until a hearing can be held on this Petition?
☒ NO ☐ YES If yes, please state reasons.

III. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. ☒ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.

2. ☒ I request that the Court determine that the need for the appointment of a guardian is proper, and that the Court appoint Paula S. Saine as the guardian for the above person and that Letters of Guardianship be issued to the guardian.

3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship
Mary Beth Moore Sjoberg	3825 Linwood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney in fact; Sole surviving child

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

Attorney: Rita Bragg Cullum
Address: Ellis, Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202
E-mail: rcullum@ellislawhorne.com
Telephone (O): 803-254-4190

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the incapacitated person of Mary Beth Moore Sjoberg.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
E-mail: paulas@sc.rr.com
Telephone (C): NA
(H): 803-261-4566

FILED

2014 APR 22 PM 3:56

RICHLAND COUNTY, S.C.

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Moore Sjoberg ("Principal"), hereby appoint Paula Saine of 3105 Grace Hill Road, Columbia, SC 29204 (Telephone: (803) 261-4566) as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence in accordance with the provisions of South Carolina Code §62-5-504, as amended.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible.

Accordingly, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

4. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

5. ORGAN DONATION

My agent may MMB / may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

A. MMB GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my Agent believes the burdens of the treatment outweigh the expected benefits. I want my Agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

B. _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
a. If I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, is expected to result in death within a relatively short period of time; or
b. If I am in a state of permanent unconsciousness.

C. _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that:

MMB I want to receive these forms of artificial nutrition and hydration, but they may be withheld or withdrawn by my Agent under the conditions given in paragraph 6 above.

_____ I want to receive these forms of artificial nutrition and hydration, and they may not be withheld or withdrawn by my Agent.

8. SUCCESSORS

If an Agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an Agent who is my spouse is divorced or separated from me, I name the following as successors to my Agent.

Alternate Agent: John Saine
Address: 3105 Grace Hill Road, Columbia, SC 29204
Telephone: (803) 261-4566

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 14th day of October, 2010.

Signature: Mary Beth Sjoberg
Mary Beth Moore Sjoberg

WITNESS STATEMENT

We, David C. Sojourner, Jr. and Gail R. Swayne, declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that she signed or acknowledged this Health Care Power of Attorney in our presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence. We are not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. We are not directly financially responsible for the principal's medical care. We are not entitled to any portion of the principal's estate upon her decease, whether under any will or as an heir by intestate succession, nor are we the beneficiary of an insurance policy on the principal's life, nor do we have a claim against the principal's estate as of this time. Neither of us are the principal's attending physician, nor an employee of the attending physician. Neither of us is an employee of a health facility in which the principal is a patient. We are not appointed as Health Care Agent or Successor Health Care Agent by this document.

Signature: David C Sojourner Jr. Date: October 14, 2010
Witness

Signature: Gail Swayne Date: October 14, 2010
Witness

Subscribed, sworn to, and acknowledged before me by Mary Beth Moore Sjoberg, the Principal, and subscribed and sworn to before me by David C. Sojourner, Jr., witness, this 14th day of October, 2010.

Gail Swayne (SEAL)
Notary Public for South Carolina
My Commission Expires: September 8, 2020

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. I hereby authorize all health care providers, including physicians, nurses and all other persons or entities who may have provided, or be providing, me with any type of health care, to disclose all of my protected health information:

a. To any agent designated in a Durable Power of Attorney or Health Care Power of Attorney signed by me when asked by my agent to do so for the purpose of determining my capacity as defined in the power of attorney or by governing law.

b. To the trustee, or a designated successor trustee, of any trust of which I am a beneficiary or a trustee when asked to do so for the purpose of determining my capacity as defined in the trust or by governing law.

c. To a guardian ad litem, if one is appointed for me, for the purpose of determining whether, and to what extent, a guardianship, conservatorship, or other protective proceeding for me is necessary or desirable.

2. This authorization is intended to provide my health care providers with the authorization necessary to allow each of them to disclose my protected health information to the persons described in Paragraphs a through c above, for the purpose of allowing each of them to make the specified determinations regarding my capacity or need for protective proceedings.

3. Information disclosed by a health care provider pursuant to this authorization is subject to re-disclosure and may no longer be protected by the privacy rules of 45 CFR, Section 164.

4. This authorization may be revoked by a writing signed by me or by my personal representative.

5. This authorization shall expire at the time of my death unless validly revoked prior to that date.

6. Any health care provider may rely upon a photocopy of this document for purposes of making any disclosure authorized herein.

Executed this 14th day of October, 2010.

Mary Beth Sjoberg

Witness

Mary Beth Moore Sjoberg

EXHIBIT C

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00048

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the and Summons and Petition for Incapacity and Appointment of Guardian, the originals of which are on file with the Probate Court, by the following method:

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

FILED
11 JUN -8 PM 2:12
PROBATE JUDGE
RICHLAND COUNTY, S.C.

to each of the following persons at the addresses shown:

	NAME	ADDRESS
1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
2.	Angela M. Kirby, Esquire Robert J. Thomas, Esquire Amy Landers May, Esquire	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210

Signature: _____
Name: Matt Gilreath, Courier
Ellis, Lawhorne & Sims, P.A.
Address: Post Office Box 2285
Columbia, South Carolina 29202
Telephone (O):(803) 254-4190

SWORN to before me this 6th
day of June, 2011

_____
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

EXHIBIT D

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00047

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the Summons and Petition for Protective Order and Appointment of Conservator, the originals of which are on file with the Probate Court, by the following method:

FILED
JUN -8 PM 2:12
AMY N. MCGILLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

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1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
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Signature: Matthew Gilreath
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Telephone (O):(803) 254-4190

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day of June, 2011

Ami M. Meetze
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

EXHIBIT E

6136635

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
) CIVIL ACTION COVERSHEET
Robert J. Thomas and Rogers Townsend & Thomas, PC,)
Plaintiff(s))
vs. 2012CP4006251
Richland County Probate Court;)
)
Defendant(s))

Submitted By:
Robert P. Wood (SC Bar #6206)
ATTORNEYS FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
(803) 343-7017 – Fax
info@rtt-law.com

2012 SEP 17 P 4:48

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

*If Action is Judgment/Settlement do not complete

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts – Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-____-_____
- ☐ Notice/File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture—Petition(840)
- ☐ Forfeiture—Consent Order
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 9/17/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
Robert J. Thomas and Rogers Townsend & Thomas, PC,) CERTIFICATE OF EXEMPTION
Plaintiff(s)) FROM ADR
)
vs.)
Richland County Probate Court;) DOCKET NO. _____
)
)
Defendant(s))

I certify that this action is exempt from ADR because:

☒ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;

☐ this action is appellate in nature;

☐ this is a post-conviction relief matter;

☐ this is a contempt of court proceeding;

☐ this is forfeiture proceeding brought by the State;

☐ this is a case involving a mortgage foreclosure; or

☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

2012 SEP 17 PM 4:48

Plaintiff/Attorney(s) for Plaintiff(s)
Robert P. Wood (SC Bar # 6206)
ATTORNEY FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900

Defendant/Attorney(s) for Defendant(s)

Date: 9/17/12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2012 SEP 17 PM 4:48

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Repsondent.

SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Petition, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto upon the undersigned attorney at his office located at 220 Executive Center Drive, Post Office Box 100200 (29202), Columbia, South Carolina, 29210 within thirty (30) days after the service hereof, exclusive of the day of such service.

If you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for the relief demanded therein and judgment by default will be entered against you.

Robert P. Wood (SC Bar No. 6206)
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC, Petitioners, vs. RICHLAND COUNTY PROBATE COURT, Respondent.	Petition for Writ of Mandamus or Writ of Certiorari (Non-Jury)

2012 SEP 17 PM 4:48

Your Petitioners would respectfully allege:

1. This Petition seeks a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg; Paula S. Saine, as the Attorney-In-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048.

2. Petitioner Robert J. Thomas is an attorney-at-law, licensed to practice law in South Carolina, with his office in Lexington County, South Carolina. He has been the attorney for Mary Beth Sjoberg for several years.

3. Petitioner Rogers Townsend & Thomas, PC is a South Carolina law firm with its principal place of business in Lexington County, South Carolina.

4. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Respondent, the Richland County Probate Court, entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate planning documents, and drafts thereof. Copies of those orders

are attached. The Court also declined to allow the Petitioners to review these files so they could ascertain the Probate's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. The Petitioners filed a motion to reconsider those orders.

5. By follow-up emails, the Court ordered Mr. Thomas and the Firm to submit a memorandum of law by September 14, 2012. A copy of that email is attached. The Court extended the deadline to today (September 17) by the attached email, but later that day ordered the production of Ms. Sjoberg's Will by 5 PM today, although it had not allowed the Petitioners to review the files.

6. The Richland County Probate Court is a court of public record and should have allowed Mr. Thomas and the Firm to review its files before the deadline for submitting a memorandum of law or producing the Will.

7. The Court had a duty to make its files available to Mr. Thomas and the Firm pursuant to Art. I § 9 of the South Carolina Constitution, the First Amendment to the United States Constitution, and the case of (and authorities cited in) Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006).

8. Producing copies of the court's records is a ministerial act.

9. The Petitioners need to see these files to ascertain the authority of the Probate Court to require the production of documents protected by the attorney-client privilege and the work produce doctrine. See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct. The Petitioners are also entitled to see these files because they are counsel for Ms. Sjoberg. Finally, the Petitioners are members of the public and are therefore entitled to see these files.

10. The Petitioners do not have any other legal remedy than a writ compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents.

11. The Petitioners have no desire to be held in contempt of court and have every intention of obeying a lawful court order. But they cannot obey an order when the court that issued it forces them to produce the Will without allowing the Petitioners an opportunity to determine the authority of the court to enter to the order.

WHEREFORE, having set forth their Petition, the Petitioners ask the Court to enter a writ of mandamus (or in the alternative a writ of certiorari) compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents. Meanwhile, the Petitioners ask the Court to stay the order of the Probate Court commanding the production of the Will and related documents.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

VERIFICATION

PERSONALLY appeared before me Robert P. Wood, who, being duly sworn, deposes and states that he is the attorney for Robert J. Thomas and the Law Firm of Rogers Townsend & Thomas; that he has read the within Petition, and that the facts stated therein are true of his own knowledge, except those matters and things alleged therein on information and belief, and as to those, he believes them to be true.

Robert P. Wood

SWORN to before me this
17th day of September, 2012

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8-30-2019

2012 SEP 17 PM 4:48

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 06, 2012 9:42 AM
To:	Robert P. Wood; Amy Landers May
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject:	Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048
Attachments:	KMBT20020120905170144.pdf

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

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Columbia, S.C. 29202-0192

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From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Thanks.

Bob Wood

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Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

NOTICES
PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 803-771-7900 (Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (I) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (II) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

Robert P. Wood

From:	Robert P. Wood
Sent:	Thursday, September 13, 2012 3:08 PM
To:	Jonathan Spitz; KIM LEWIS
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; 'JACQUELINE BELTON'
Subject:	RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

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Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

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Sent: Monday, September 10, 2012 1:40 PM
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Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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704-442-9500 (Charlotte office) or r. .eturn e-mail, and destroy any copies (ele. .nic, paper, or otherwise) that you may have of this communication.

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Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:11 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

I would also like to see the notice of the hearing held on May 9 and proof of service of that notice.

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Thursday, September 13, 2012 4:58 PM
To: Robert P. Wood; Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
I just got out of a long hearing. There will be no problem with you receiving the documents you requested. The quickest way to get them to you would be to scan and e-mail them, if that works for you. However, as that can't be done until tomorrow I can give you until next Monday to get your response to me, if needed.

Please let us know if that works for you.

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Thursday, September 13, 2012 3:08 PM
To: Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; JACQUELINE BELTON
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
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-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,

Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to

examine the files, which is our stan. .d policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
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(Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

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Robert P. Wood

From:	Robert P. Wood
Sent:	Thursday, September 13, 2012 6:36 PM
To:	'Jonathan Spitz'; 'KIM LEWIS'
Cc:	JACQUELINE BELTON (BELTONJ@rcgov.us)
Subject:	Sjoberg

Could you also scan and email to me:

The report by the visitor who went to Ms. Sjoberg's residence.

I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send me that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Friday, September 14, 2012 5:58 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS; mike@belserpa.com
Subject: RE: Sjoberg

Dear Mr. Wood:
Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

Thanks and have a good weekend.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Friday, September 14, 2012 5:26 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS
Subject: Sjoberg

Judge Belton: I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday.

If you are pressed for time, the main . . .ngs I'd like to see as soon as possible are

the affidavit of service of the summonses and petitions on Mrs. Sjoberg;
the affidavit of service of the notice of the 5/9/11 hearing; and
evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally.

All these go, of course, to whether the court had personal jurisdiction over Ms. Sjoberg and whether she was afforded timely notice and an opportunity to be heard before entry of the appointment orders that resulted in the order requiring our firm to turn over material that we feel is covered by the attorney-client privilege and the work product doctrine.

But I would still like to see the other documents when you can get to them. I have, by the way, now seen Dr. Nelson's report.

Thanks.

Bob Wood

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert F. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 ORDER FOR RELEASE OF CLIENT DOCUMENTS

2012 JUL 31 PM 12:41
ALEX KINLOCH ULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER COMES BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

A conference regarding the status of the permanent Guardianship and Conservatorship appointments of Ms. Saine was held July 13, 2012, in chambers. Present at the status conference were Rita Bragg Cullum and A. Bea Hightower. At the status conference the Court discussed the payment of attorneys' fees and Guardian *ad Litem* fees, the estate planning documents of Ms. Sjoberg, and the status of the Guardianship and Conservatorship of Ms. Sjoberg going forward.

Ms. Saine is the Attorney-in-Fact for Ms. Sjoberg under a Healthcare Power of Attorney dated October 14, 2010, and a Durable Power of Attorney, although never recorded, executed by

Ms. Sjoberg. Ms. Saine was appointed as the Temporary Guardian and Temporary Conservator for Ms. Sjoberg by Order of this Court dated May 12, 2011. That this Court expects that Ms. Saine's temporary appointments will become permanent appointments.

That this Court is informed and believes that certain estate planning documents executed by Ms. Sjoberg are currently in possession of the law firm of Rogers, Townsend & Thomas, PC. That the attorney and Guardian *ad Litem* for Ms. Sjoberg informed the Court that she has contacted Robert J. Thomas, former long-time attorney for Ms. Sjoberg, and attorney Amy Landers May, both of Rogers, Townsend & Thomas, PC of this request. The attorney for Ms. Saine and the attorney and Guardian *ad Litem* of Ms. Sjoberg have requested that these certain estate planning documents and any and all documents pertaining to a rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, be turned over to Ms. Saine as the Temporary Guardian and Conservator for Ms. Sjoberg and that this Court authorize Rogers, Townsend & Thomas, PC to produce these certain documents. After considering the request of the attorney for Ms. Saine and the attorney and Guardian *ad Litem* for Ms. Sjoberg, the Court finds that the request is appropriate and that in order for the Temporary Guardian and Conservator to fulfill her fiduciary duties to her ward, it is in the best interests of Ms. Sjoberg for her Attorney-in-Fact and Temporary Guardian and Conservator to be in possession of her estate planning documents and the rental property agreement.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will

and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as the Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas.

AND IT IS SO ORDERED:

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 31, 2012
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 AMENDED ORDER FOR RELEASE OF CLIENT DOCUMENTS

FILED
2012 AUG 24 PM 3:35
AMY E. TESSELOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER CAME BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

An Order was issued by this Court on July 31, 2012 in which the law firm of Rogers, Townsend & Thomas, PC (hereinafter "RTT") was authorized to produce and release and was directed to immediately produce and release any and all estate planning documents, not just final or most recent versions, of estate planning documents executed by Mary Beth Sjoberg. The documents included, but were not limited to, Last Will and Testaments; trusts, revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy,

including copies in digital format or electronically stored. Reference is made to the July 31st Order for the background concerning this matter. The Order further required that whoever had actual possession of the requested documents, whether they were in the possession of RTT and/or attorney Robert J. Thomas, turn the documents over to Paula S. Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg

That this Court is informed and believes that some of the requested estate planning documents may have been turned over to Ms. Hightower, as attorney and Guardian *ad Litem* for Ms. Sjoberg, and/or to Paula Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg. However, the Court was copied on a letter sent by Mr. Thomas to Ms. Hightower which stated that some documents would be turned over, but expressed concerns about the general nature of the request and concerns about violating attorney-client privilege by turning over other materials from his files. Given that concern, this Court is amending its prior order to clarify what materials are being requested from the files of attorney Robert J. Thomas and/or RTT. Though some documents may have already been turned over by Mr. Thomas, for the sake of clarity this Amended Order will restate all of the documents that are stated in the previous order and will further clarify to whom remaining documents are to be given.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all actual estate planning documents, not just final or most recent versions of those estate planning documents executed by Mary Beth Sjoberg, including, but not limited to: Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and

business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

August 24, 2012
Columbia, South Carolina
Nunc Pro Tunc to July 31, 2012

EXHIBIT F

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
2012-CP-40-06251

RICHLAND COUNTY
FILED
2012 DEC 11 AM 10:08
JEANNETTE W. WICKENSE
C.C.P. & G.S.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Respondent.

Return to Motion to Dismiss

(Respondent has Complied So Case is Moot)

1. The Petition in this case sought a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg: Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048. The Petitioners sought these files to determine whether the Probate Court had the authority to issue an order requiring the Petitioners to turn over various attorney-client privileged documents.[1] If the Court had that authority, the Petitioners would turn them over; if the Court order were not authorized by law, the Petitioners could not turn them over because do to so would violate the Rules of Professional Conduct.

2. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Probate Court entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate

[1] See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

planning documents, and drafts thereof.[2] The Court declined to allow the Petitioners to review these files so they could ascertain the Probate Court's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. Yet the Court persisted in compliance with its order even while it continued to deny the Petitioners access to documents that would enable them to verify that the order was authorized. (In the context of this case, the issue was whether the Probate Court had personal jurisdiction over the Petitioners' client such that it could assume control of her financial affairs.)

3. Not wanting to be held in contempt for refusing to comply with the court order, but not wanting to release attorney-client-privileged documents pursuant to an order issued by a court that might very well not have jurisdiction, the Petitioners filed and served this lawsuit on September 17, 2012, the deadline set for compliance with the Probate Court's order.

4. On October 18, 2012, the Probate Court took three actions:

a. The Probate Court released to the Petitioners all of the portions of its files that the Petitioners felt they needed in order to ascertain whether the orders were authorized;

b. The Probate Court provided the Petitioners with a certification from its counsel that all of the Probate Court's files had been turned over except for certain documents described in detail that the Petitioners did not need to see; and

c. The Probate Court entered an order saying that it had released the files in the exercise of its discretion and not because it had to.

[2] The Probate Court entered an order denying the Petitioners' motion to reconsider last week, and the Petitioner has appealed that order to the Circuit Court.

5. In sum, on October 18, the Probate Court provided the Petitioners with the relief they sought in this lawsuit.[3]

8. Because the Probate Court has now provided the file documents and certification of completeness that the Petitioners sought in this lawsuit, the Petitioners believe this lawsuit is now moot, and they so inform the Court.

Robert P. Wood
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Counsel for the Firm

December 7, 2012.

[3] Issues involving some language of the order issued when the Probate Court turned over its file to the Petitioners remained unresolved until today.

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2012-CP-40-06251

I, Sheri H. McClendon, a paralegal with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 7, 2012, the following addresses:

RICHLAND COUNTY
FILED
2012 DEC 11 AM 10:00
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Document Served:

Return to Motion to Dismiss

Counsel Served:

Desa Ballard, Esq.
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, SC 29171

Sheri H. McClendon
Paralegal to Robert P. Wood

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 27th day of February 2014, I served ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Memorandum In Support of Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rite Bragg Caughman, Esquire
Adams & Reese, L.L.P.
Post Office Box 2285
Columbia, South Carolina 29202

Arthur K. Aiken, Esquire
Aiken & Hightower, P.A.
Suite 201
2231 Devine Street
Columbia, South Carolina 29205

Laura J. Fetner

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ex Parte Robert J. Thomas and Rogers Townsend & Thomas, PC In the Matter of Mary Beth Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg, Temporary Guardian and Conservator.	)	IN THE PROBATE COURT Case No. 2011-GC-40-00047 and 2011-GC-40-00048 **MEMORANDUM IN OPPOSITION MOTION TO RECONSIDER MADE BY ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC**

STATEMENT OF THE CASE

This case began as an action for appointment of Paula Saine (PS) as the guardian and conservator for her elderly mother, Mary Beth Moore Sjoberg (MBMS). This Court entered an Order and an Amended Order requiring the law firm and the lawyer that prepared MBMS's estate planning documents, Rogers Townsend & Thomas, PC (RTT) and Robert J. Thomas (RJT) of that firm, to produce them to MBMS's Guardian ad litem, Annie Bea Hightower (ABH) and any documents not already produced to ABH were to be turned over to the Richland County Probate Court for examination and safekeeping.

RTT and RJT objected to the Production Orders, and RTT personnel signed and filed several documents setting forth the factual and legal arguments in support of their objections to the Production Orders. PS made a Motion for Sanctions in which she asserted that RTT and RJT violated the South Carolina Frivolous Civil Proceeding Sanctions Act (SCFCPSA), S.C. Code § 15-36-10, and Rule 11 SCRCP in making their objections to the Production Orders.

On January 2, 2015 this Court entered an Order (Sanctions Order) granting PS' Motion for Sanctions. RJT and RTT filed and served a Motion to Reconsider the Sanctions Order on

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January 15, 2015. PS submits the following Memorandum in opposition to the Motion to Reconsider made by RJT and RTT.

STATEMENT OF THE FACTS

On January 11, 2011, RJT sent PS an executed copy of a Will of MBMS that was signed by MBMS on November 12, 2010. This Court appointed PS Temporary Guardian and Temporary Conservator for MBMS under Orders. On July 31, 2012, this Court entered an Order (Production Order, App 8) that compelled RJT and RTT, as estate counsel for MBMS, to produce MBMS's estate planning documents to PS, as Attorney-in-Fact of MBMS and Temporary Guardian and Conservator for MBMS. This Court entered an Amended Order on the same subject on August 24, 2012 but clarified that any documents not already produced to ABH and/or PS were to be turned over to the Richland County Probate Court for examination and safekeeping. Thomas and RTT did not produce Sjoberg's estate documents to ABH or PS or to the Richland County Probate Court. Instead, they filed, on August 30, 2012, a Motion to Reconsider and Claim of Privilege that attacked this Court's August 24, 2012 Order. RJT and RTT filed two Memoranda in support of the Motion to Reconsider. Taken together, these Memoranda advance the following arguments:

- this Court's Appointment Orders were invalid because this Court had no personal jurisdiction over Sjoberg for want of service of the initial pleadings on her;
- this Court's Appointment Orders were invalid under the due process clause because Sjoberg was not given notice of the May 9, 2011 appointments hearing;
- this Court's Appointment Orders were invalid because this Court denied Sjoberg the right to counsel of her choice;
- this Court's Production Orders were invalid because this Court had no subject matter jurisdiction to order production of Sjoberg's estate planning documents: and
- this Court's Production Orders were invalid because they compelled Thomas and RTT to violate the attorney-client privilege arising from their representation of Sjoberg.

After review of the parties' written submissions, this Court denied the Motion to Reconsider by Order filed December 4, 2012.

RJT and RTT filed a Notice of Appeal. On January 17, 2013, Thomas and RTT filed a document in the Circuit Court styled Grounds of Appeal. The Grounds of Appeal restates the arguments set forth in the Memoranda in support of the Motion to Reconsider. The parties to the appeal submitted briefs, and the Circuit Court heard oral argument. The Circuit Court took the appeal under advisement. While the appeal was under advisement, MBMS died. Because of MBMS death, the Circuit Court dismissed the appeal as moot by Order dated January 10, 2014. MBMS's GAL, ABH, received written notice of entry of the Circuit Court's January 10, 2014 Order on January 11, 2014. The Motion for Sanctions was made on January 21, 2014.

After MBMS's death, RTT and RJT filed the Will of MBMS for probate. The Will of MBMS filed by RTT and RJT for probate was the exact same executed Will signed by MBMS on November 12, 2010 that RJT had sent to PS on January 11, 2011.

The Motion for Sanctions asserts that signing and filing of the Motion to Reconsider and the two Memoranda in support of that Motion, violate the SCFCPSA and Rule 11(a) SCRCP for the following reasons:

- a reasonable attorney in these circumstances would believe that under the facts, the position advanced in those filings was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification or reversal of existing law;
- a reasonable attorney presented with the same circumstances would believe those filings were frivolous;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not warranted under existing law or any good faith argument for the extension, modification, or reversal of existing law;
- a reasonable attorney would believe that the arguments advanced in those filings were

frivolous as not reasonably supported by the facts;

- those filings are frivolous;
- the arguments made in those filings are frivolous.

PS and the probate estate of MBMS have incurred substantial attorneys' fees and costs in responding to the Motion to Reconsider and to the two Memoranda in support of that Motion.

ARGUMENT

I. THE PURPOSES FOR A MOTION UNDER RULE 59(e) SCRCP

A motion under Rule 59(e) SCRCP can serve two purposes. First, the motion must be made to preserve for appellate review issues that the moving party raised to the trial court but that were not explicitly addressed in the trial court's order. Elam v SCDOT, 361 S.C.9, 602 S.E.2d 772 (2004). Second, the motion may be made in an effort to convince the trial court to reconsider the result reached in its order and rule in favor of the moving party. Elam, 361 S.C. at 24, 602 S.E.2d at 775. RJT and RTT explicitly make their Motion to Reconsider for both of these purposes.

II. SCOPE OF ISSUES THAT CAN BE RAISED IN A MOTION UNDER RULE 59(e) SCRCP

Regardless of the purposes driving the filing of a motion under Rule 59(e), the issues that can be addressed in such a motion are restricted to issues raised initially before the trial court. Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009) (party cannot use Rule 59(e) motion to present to trial court an issue that party could have raised prior to judgment but did not); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). "A party cannot use Rule 59(e), SCRCP, to present 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 128, 131-132 (Ct. App. 1995); *rev'd* on other grounds, 329 S.C. 385, 496 S.E. 21 (1998) (citing Hickman, supra). The issues properly

before this Court on the Motion to Reconsider are limited to issues raised by RJT and RTT to this Court before the entry of the Sanctions Order.

III. OVERVIEW OF THE SCFCPSA AND RULE 11 SCRCP.

A. SCFCPSA

Under the SCFCPSA, an attorney or litigant may be sanctioned for filing a frivolous pleading, motion or document if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification, or reversal of existing law" S.C. Code § 15-36-10(A)(4)(a)(ii) or "a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous." S.C. Code § 15-36-10(A)(4)(a)(iv).

An attorney or litigant may also be sanctioned under the SCFCPSA for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" S.C. Code § 13-36-10(A)(4)(b) and for "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." S.C. Code § 15-36-10(A)(4)(c). Sanctions under the SCFCPSA may include "an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party." S.C. Code § 15-36-10(G)(1).

The party making the motion for sanctions under S.C. Code § 15-36-10 has the burden of proof. S.C. Code § 15-36-10(C)(2). To meet this burden of proof, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. S.C. Code § 15-36-10(C)(2).

B. RULE 11 SCRCP

Under Rule 11 SCRCP, "[T]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Rule 11(a) SCRCP. "[A] party and/or the party's attorney may be sanctioned (under Rule 11(a) SCRCP) for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (parenthetical added). "If a pleading, motion or other paper is signed in violation of this Rule (Rule 11(a) SCRCP), the court upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Rule 11(a) SCRCP (parenthetical added).

The party moving for sanctions under Rule 11 SCRCP has the burden of proof. To meet this burden, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. Clegg v Lambrecht, 678 S.E.2d 260, 262 (S.C. App. 2009) ("the party moving for sanctions has the burden to establish the grounds for sanctions by a preponderance of the evidence.") (citing Rutland v Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 97, 637 S.E.2d 316, 319 (Ct. App. 2006)).

IV. PS HAD AUTHORITY TO PROSECUTE THE SANCTIONS MOTION AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MBMS.

According to S.C. Code § 62-3-703(c), [e]xcept as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State ... as his decedent had

immediately prior to death." The decision whether to impose sanctions sounds in equity. The Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003). "As a general rule, the maxim 'Actio personalis moritur cum persona' was not applied within the jurisdiction of equity." Page v. Lewis, 203 S.C. 190, 194, 26 S.E.2d 569, 570 (1943) (citations omitted). In other words, the rule that personal actions die with the person does not apply in the jurisdiction of equity. MBMS's claim for sanctions survived her death, and as the Personal Representative, PS has the authority to pursue that claim.

With no authority to contest the point that PS had the authority to pursue sanctions against the as Personal Representative of MBMS' Estate, RJT and RTT resort to a hyper technical argument that PS is not listed in the caption of the Motion for Sanctions as Personal Representative of MBMS' estate. (Memo. in Supp. Motn. Recons. Sanct. Ord. pp. 4-5). The caption is the original caption of the case because that is the case in which sanctions are being sought. Rule 17 requires that "[e]very action shall be prosecuted in the name of the real party in interest." The Motion for Sanctions was prosecuted in the name of PS, who unquestionably has full authority as Personal Representative of her mother's Estate to pursue sanctions against RJT and RTT. Moreover, any doubt as to the capacity in which PS was pursuing sanctions was fully resolved on service of PS' Memorandum in Support of Motion for Sanctions in which PS argued that she had the capacity to pursue sanctions as Personal Representative of her mother's Estate. (Memo. In Supp. of Motn. For Sanct. pp. 5-6).

V. PS' SCFCPSA CLAIM IS NOT BARRED AS UNTIMELY.

Our state has "established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Pittman v Republic Leasing Company, Inc., 351 S.C. 429, 432, 570 S.E.2d 187, 190 (Ct. App. 2002). (emphasis added). In Pittman, the Court of

Appeals addressed the issue of the limitations period applicable to SCFCPSA claims. The moving party in Pittman made its motion for sanctions almost two months after final judgment. Vacating the trial court's award of sanctions, the Pittman court "refuse[d] to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment." Pittman, 351 S.C. at 432, 570 S.E.2d at 189-190.

The Court of Appeals followed Pittman with Ex parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004). In Ex parte Beard, the moving party made his SCFCPSA motion for sanctions almost six months after the main case was dismissed with prejudice. The trial court dismissed the SCFCPSA motion for sanctions as untimely. The Ex parte Beard court affirmed the trial court's dismissal of the SCFCPSA motion for sanctions based on the holding that "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Ex parte Beard, 359 S.C. at 357, 597 S.E.2d at 838.

Both Pittman and Ex parte Beard analogize SCFCPSA motions for sanctions to the post-trial motion to alter or amend under Rule 59(e) SCRCP. Pittman, 351 S.C. at 432, 570 S.E.2d at 189, Ex parte Beard, 359 S.C. at 358, 597 S.E.2d at 838. Rule 59(e) SCRCP states that "[A] motion to alter or amend a judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." (emphasis added) Since the Court of Appeals has twice recognized that motions made under Rule 59(e) SCRCP are the closest analog to SCFCPSA motions for sanctions, it stands to reason that they should have the same limitations period.

Motions for sanctions under the SCFCPSA must be filed within ten (10) days of notice of final judgment. Pittman v Republic Leasing, 351 S.C. 429, 432, 570 S.E.2d 187, 189-190; Ex Parte Beard, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004). The judgment of the Probate Court in these conservatorship and guardianship actions did not become final until, at the

earliest, the date on which MBMS' GAL, ABH, received written notice of the Circuit Court's Order dismissing the appeal as moot. RJT and RTT filed an interlocutory appeal, and much was left to be done in the probate court at the time of that appeal before the probate court produced a final judgment in these actions. No permanent guardian or permanent conservator had been appointed for MBMS, so the actions in the probate court had not reached the level of anything like a final judgment at the time of the appeal. MBMS' GAL, ABH, received written notice of the Circuit Courts January 10, 2014 Order dismissing the appeal as moot on January 10, 2014. The Motion for Sanctions was made on January 21, 2014.

RJT and RTT assert in their Memorandum that ABH received written notice of the Circuit Court's Order dismissing the appeal of RJT and RTT on January 10, 2011. (Memo. In Supp. Mtn. Recons. p. 7, n. 2). Even if this is correct, PS' claims for SCFCPSA sanctions made in the Motion for Sanctions were timely. SCFCPSA claims have the same deadline as post-trial motions, ten (10) days after written notice of entry of a final judgment. Rule 6 SCRCP states the general rule that deadlines are extended to the next day that is not a holiday if the deadline falls on a holiday. The deadline for making the SCFCPSA claim in the Motion for Sanctions fell, by the calculations of RJT and RTT, on January 20, 2014. January 20, 2014 was a holiday (Martin Luther King, Jr.'s Birthday), so the deadline for making the SCFCPSA claim in the Motion for Sanctions was January 21, 2014, the day that PS filed and served her Motion for Sanctions.

VI. EVEN IF PS' SCFCPSA CLAIM IS BARRED AS UNTIMELY, HER RULE 11 SCRCP CLAIM IS TIMELY.

"There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment." Russell v Wachovia Bank, 370 S.C. 5, n. 11, 633 S.E.2d 722, n.11 (2006). In support of this proposition our Supreme Court in Russell cited our Court of Appeals' decision in Ex Parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004).

In Ex Parte Beard, the Court of Appeals affirmed an order of the trial court that addressed a Rule 11 SCRCP motion even though the motion was made six months after the underlying action was settled and dismissed with prejudice. Ex Parte Beard, 359 S.C. at 359-360, 597 S.E.2d at 839. In fact, whether PS's Motion for Sanctions proceeds under the SCFCPSA or Rule 11 SCRCP, makes no difference because the criteria for awarding sanctions under Rule 11 SCRCP and the SCFCPSA are essentially the same. The Father, 345 S.C. at 72, 545 S.E.2d at 531.

VII. RULE 1.6(a), RULE 407, SCACR, PERMITTED RJT AND RTT TO ASSERT ONLY NONFRIVOLOUS CLAIMS THAT THE PRODUCTION ORDERS WERE NOT AUTHORIZED AND NONFRIVOLOUS CLAIMS THAT MBMS' WILL WAS PROTECTED FROM COMPELLED DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE

Rule 1.6(a) RPC, Rule 407, SCACR states that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1.6(b)(7) RPC, Rule 407, SCACR states that a lawyer may reveal information relating to the representation of a client to the extent the lawyer believes necessary "to comply with other law or a court order." Comment 16 to Rule 1.6 RPC, Rule 407, SCACR states that when confronted by an order to reveal information relating to the representation of a client, "the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." (emphasis added).

Throughout the proceedings on the Motion for Sanctions, RJT and RTT have asserted that the Production Orders, which they violated. were unenforceable against them because those Production Orders were not authorized by other law (personal jurisdiction and constitutional Due Process) and because those Production Orders sought information (MBMS' Will) that was

protected against disclosure by the attorney-client privilege. The core question concerning sanctions in this case is whether the arguments made by RJT and RTT that the Production Orders were unauthorized under law and that MBMS' Will was protected from compelled disclosure by the attorney-client privilege are frivolous. The analysis below demonstrates that all of these arguments are frivolous.

VIII. ALL OF THE ARGUMENTS MADE BY RJT AND RTT THAT THE PRODUCTION ORDERS WERE UNAUTHORIZED ARE FRIVOLOUS

A. Introduction

RJT and RTT assert that they presented nonfrivolous arguments that the Production Orders were not authorized. The arguments that RJT and RTT advanced on the authorization issue find their sources in the areas of law having to do with personal jurisdiction and procedural due process. A reasonable attorney would believe that the arguments of RJT and RTT on the personal jurisdiction and procedural due process issues were frivolous as having no good ground to support them.

B. The personal jurisdiction arguments of RJT and RTT were frivolous

According to Rule 12(h) SCRCP, "[a] defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." The attorney representing MBMS on the Petitions for Guardianship and for Conservatorship, Pope Johnson, made no motions that raised the defense of lack of jurisdiction over the person of MBMS and filed an Answer to the Petitions that did not raise any defense of lack of jurisdiction over the person of MBMS. (Answer to Petition for

appointment of Guardian, Answer to Petition for appointment of Conservator, App. 26 - 34) The defense of lack of jurisdiction over the person was waived, and any reasonable attorney reviewing the facts of this case would conclude that any argument asserting this waived defense is frivolous.

According to S.C. Code § 62-5-310(A), "[i]f the (probate) court makes emergency preliminary findings that:

(1) a physician has certified, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the (probate) court, with or without petition or notice, may appoint a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311." (parentheticals added and emphasis added)

S.C. Code § 62-5-310(A) clearly authorized this Court to proceed with the temporary appointment hearing for a guardian for MBMS that was held on May 9, 2011 without notice to MBMS. Any argument that proceeding with the temporary appointment hearing on May 9, 2011 somehow required personal service on MBMS has no basis in law or fact, and a reasonable attorney would consider that argument frivolous.

The attorney who represented MBMS at the October 26, 2011 hearing to consider PS's Petitions to be appointed as permanent conservator and permanent guardian of MBMS, Pope Johnson, was instructed by this Court before that hearing to present evidence at the hearing that MBMS had contractual capacity to retain him. "South Carolina has defined contractual capacity as a person's ability to understand. at the time that the contract is executed, the nature of the contract and its effect." In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854, 857 (Ct. App. 2001) (citing In re: Nightingale's Estate, 182 S.C. 527, 542, 189 S.E. 890, 896 (1937).

Pope Johnson presented a report of William Brannon, MD in which Dr. Brannon gave his opinion that MBMS had only testamentary capacity. (Report of William Brannon, MD, App. 64) "The capacity of a testator to make a will is tested by whether he (1) knew his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977) (citing Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E. 811 (1926)). Testamentary capacity has a lower threshold than contractual capacity, so Dr. Brannon's opinion left this Court with no evidence that MBMS had contractual capacity to retain Pope Johnson. In the absence of any evidence that MBMS had contractual capacity, this Court quite rightly ruled that Pope Johnson's agreement with MBMS to provide legal services was void and removed Pope Johnson as MBMS's attorney.

Having relieved Pope Johnson, This Court appointed Michael Polk (Polk) to act as MBMS's attorney. As MBMS's attorney, Polk interviewed her on two separate occasions reviewed the case file and conducted an investigation regarding her legal interests. (Polk Report, App. 68) As requested by this Court, Polk filed a written report in which he stated, without reservation, that MBMS's legal rights were adequately protected. (Polk Report, App. 68)

RTT and RJT assert that because Mr. Polk was not specifically directed in the Orders appointing him to advocate the jurisdictional issues raised in their Motion to Reconsider, Polk was limited in the scope of his representation and could not waive the jurisdictional issue on behalf of MBMS. This argument ignores the fact that Polk, as an officer of this Court and as an experience practitioner, does not need direction by this Court to adequately represent MBMS.

Polk reviewed all issues presented and specifically noted the procedural defects as alleged by RTT and RJT. Polk investigated the legal rights of MBMS and found that her interests did not lay in challenging the removal of Pope Johnson as her attorney, nor did they lay

in raising procedural defects of process which would prolong the proceedings and create greater anxiety for MBMS. After consulting with his client on two separate occasions, thoroughly reviewing this Court's file, and interviewing necessary participants, Polk concluded that MBMS's rights had been protected and were adequately represented.

Polk fulfilled his duty to MBMS and fully advocated her positions and represented her legal interests. Rule 1.14(a) RPC, Rule 407, SCACR state that "[w]hen a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of . . . mental impairment . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

In his representation of MBMS, Polk determined that MBMS did not want to contest the legal action temporarily appointing her daughter, PS, as her legal guardian and conservator. Polk did not object to this process continuing because having PS appointed as MBMS's permanent guardian and permanent conservator was MBMS's wish. Polk supported MBMS' wish to have PS appointed her permanent guardian and permanent conservator as any lawyer would in the normal course of the client-lawyer relationship.

C. The procedural due process arguments of RJT and RTT were frivolous.

The procedural due process principle requiring notice does not prohibit court rules providing for waiver of insufficiency of service of process. If they did, Rule 12(h) SCRCP would be unconstitutional as violating the due process principle requiring notice. In so many ways, MBMS' right to insist upon personal service was waived, and the arguments of RJT and RTT to the contrary were frivolous.

IX. A REASONABLE ATTORNEY WOULD CONCLUDE THAT THE ATTORNEY-CLIENT PRIVILEGE DID NOT SUPPORT THE REFUSAL BY RTT AND RJT TO PRODUCE THE WILL AND THAT ANY ATTORNEY-CLIENT PRIVILEGE CLAIM WAS FRIVOLOUS.

"The attorney-client privilege protects against disclosure of confidential communications by a client to his or her attorney." Crawford v. Henderson, 356 S.C. 389, 395, 589 S.E.2d 204, 207, 589 S.E.2d 204, 207 (Ct. App. 2003) (citing State v. Owens, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992)). "The (attorney-client) privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures by the client within the relationship is maintained." State v. Doster, 276 S.C. 647, 650-651, 284 S.E.2d 218, 219 (1981) (parenthetical added). However, like other privileges, the attorney-client privilege is subject to waiver. South Carolina State Highway Dep't v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 620 (1973).

'The attorney-client privilege is owned by the client, and, therefore, can be waived by the client." Floyd v. Floyd, 365 S.C. 56, 86, 615 S.E.2d 465, 482 (Ct. App. 2005) (citing Booker, 260 S.C. at 254, 196 S.E.2d at 620). "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct. App. 1984) (citing Duplan Corp. v Deering Milliken, Inc., 397 F. Supp. 1146 (D.S.C. 1975); U.S. v. Jones, 696 F.2d 1069 (4th Cir. 1982).

Unless he is prepared to admit that he violated Rule 1.6 RPC, Rule 407, SCACR by revealing the Will to PS during MBMS's lifetime, RJT must admit that his disclosure of the Will to PS before MBMS's death was authorized by MBMS. The disclosure of the Will to PS as

authorized by MBMS waived the attorney-client privilege that might otherwise have protected the Will from disclosure. Disclosure of the Will to PS waived the attorney-client privilege, and RTT and RJT were well aware of the facts supporting this waiver. A reasonable attorney possessing the knowledge of RTT and RJT about the inter vivos disclosure of MBMS's Will to PS would conclude that that disclosure of the Will to PS waived MBMS's attorney-client privilege to prevent disclosure of the Will and that any argument to the contrary is frivolous.

X. NOTICE AND GROUNDS FOR APPEAL CAN BE A BASIS FOR AWARDING SANCTIONS

According to Rule 74 SCRCP, which deals with appeals to the circuit court, states that "proceedings in the circuit court shall be in accordance with these rules (the South Carolina Rules of Civil Procedure)" (parenthetical added). Rule 11 applies to the Notice of Appeal and Grounds for Appeal filed by RJT and RTT in the circuit court.

CONCLUSION

For the foregoing reasons, this Court should deny the Motion to Reconsider the Sanctions Order that was made by RJT and RTT.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

By: s/Arthur K. Aiken

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ATTORNEYS FOR PETITIONER

Columbia, South Carolina
March 9, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2015 MAR 17 PM 4:18
RICHLAND COUNTY, S.C.

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S REPLY TO PETITIONER'S MEMORANDUM IN OPPOSITION TO RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

Robert J. Thomas and Rogers Townsend & Thomas, PC ("RTT") submit this Reply to Petitioner's Memorandum in Opposition to RTT's Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions.

Argument

I. To the extent Petitioner's Memorandum is duplicative or non-responsive to RTT's Memorandum in Support of Rule 59(e) Motion to Reconsider, no reply is necessary and RTT directs the Court to its previously filed Memorandum.

Many of the arguments in which Petitioner advances in her Memorandum are duplicated verbatim from Petitioner's Memorandum in Support of Motion for Sanctions dated May 19, 2014. Most notably, this includes Petitioner's reply to RTT's Rule 59(e) ground that RTT's objection to the Court's Orders was not frivolous, which is the crux of the issue before this

Court. (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., pp. 11-14; Pet'r Mem. in Supp. of Mot. for Sanctions, pp. 9-13). Petitioner's remaining arguments are procedural. To the extent Petitioner's arguments are duplicative of any prior memorandum Petitioner filed with this Court, RTT already addressed and fully briefed those issues in its previous Memorandum in Support of RTT's Rule 59(e) Motion to Reconsider. In an effort to avoid further duplicity, RTT directs this Court to its Memorandum and incorporates the same by reference in reply.

Likewise, RTT need not respond to the facts and issues raised in RTT's Memorandum in Support of Rule 59(e) Motion that Petitioner failed to address or otherwise reply to in her Memorandum. Those facts and issues are generally summarized as follows:

- There are no facts in the record to support an "emergency appointment" of the Temporary Conservator and Temporary Guardian.
- No hearing was held within 30 days after the date of the appointment, May 21, 2011, of a Temporary Guardian and Temporary Conservator, as mandated by S.C. Code Ann. § 63-5-310(D).
- Ms. Saine filed the petitions in the guardianship and conservatorship actions in her capacity as attorney-in-fact, and then purported to accept service on Ms. Sjoberg's behalf in that same capacity, despite the fact that the Durable Power of Attorney Ms. Saine relied upon did not give her the power to accept service of a lawsuit or defend on Ms. Sjoberg's behalf.
- Ms. Saine's authority as Temporary Guardian and Temporary Conservator expired months before the Court's first Order for Release of Client Documents.
- The Proof and Delivery filed by Ms. Caughman did not relate to notice of the initial Guardianship or Conservatorship hearing.
- RTT submitted its first and second memoranda in support of its Motion to Reconsider Order for Release of Client Documents at the request of the Court.
- RTT did not have access to the Court's file before it filed its Motion to Reconsider and Memorandum in Support.
- There is nothing in the record to indicate that the Conservator requested Ms. Sjoberg's estate documents for a valid purpose or that there was a time sensitive reason to obtain the documents.
- The law regarding the privileged nature of a living person's estate planning documents and will is complex and undeveloped.
- The Court failed to consider additional factors as mandated by the Act, including previous violations of the Act and Rule 11 and the complexity of the law relating to the issues before the Court.
- The filing and signing of the Notice of Appeal and the Grounds for appeal are not subject to sanctions under the Act.

- Attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading.

II. The additional arguments advanced by Petitioner that are responsive to RTT's Memorandum and are not duplicative fail as a matter of law.

In regard to the points that Petitioner advances in her Memorandum that are apparently in response to RTT's Memorandum and that are not identical to those already raised in her Memorandum in Support of Motion for Sanctions, those arguments are procedural in nature. Even if this Court were to accept those arguments, sanctions remain inappropriate because RTT did not act unreasonably in challenging the Release Orders. Nevertheless, Petitioner's remaining arguments fail as a matter of law because her Motion for Sanctions was procedurally defective and could not be properly considered by this Court. RTT summarizes and replies to Petitioner's additional arguments as follows:

A. Rule 59(e) Standard

Without analysis, Petitioner generally cites the purposes of a Rule 59(e) Motion and the scope of issues that can be raised under the same. (Pet'r Mem. in Opp'n to RTT's Rule 59(e) Mot., p.4). However, the record does not indicate, and Petitioner does not contend, that any of RTT's Rule 59(e) grounds raised in its Memorandum in Support are not appropriately before this Court. Therefore, Petitioner raises no issues in that section of her Memorandum that require a reply.

B. Standing of Petitioner to Bring Motion for Sanctions

Apparently in response to RTT's ground that Petitioner lacked standing to file the Motion for Sanctions, Petitioner argues (1) RTT's position is "hyper technical"; (2) Petitioner had authority to pursue sanctions as Personal Representative; and (3) "any doubt as to the capacity in which [Petitioner] was pursing sanctions was fully resolved on service of [Petitioner's]

Memorandum in Support of Motion for Sanctions, in which [Petitioner] argued that she had the capacity to pursue sanctions as Personal Representative of her mother's Estate." (Pet'r Mem. in Opp'n to RTT's Rule 59(e) Mot., p. 7).

In regard to Petitioner's contention that RTT's standing argument is "hyper-technical," Petitioner fails to apprehend that RTT is entitled to be sued by the correct party. If a hyper-technically incorrect party is permitted to sue RTT, RTT runs the risk of then defending the same action against the hyper-technically correct party.

Petitioner also fails to acknowledge the language of Rule 17, which requires that "[e]very action ***shall be*** prosecuted ***in the name of*** the real party in interest." SCRCP Rule 17 (emphasis added). Petitioner admits she had authority to sue as Personal Representative, and she admits that she was aware of this at the time she filed her Memorandum in Support of Motion for Sanctions, yet Petitioner offers no explanation as to why she failed to do so. Petitioner wants this court to ignore that fact and dismiss RTT's argument by characterizing it as "hyper-technical" despite (1) her being aware of Rule 17, (2) RTT's objection on the basis of standing, and (3) Petitioner's acknowledgment that her appropriate capacity to bring the Motion was as Personal Representative. Simply because Petitioner could have brought the motion as Personal Representative does not cure the procedural defect because she actually, and willfully, failed to do so.

C. Subject Matter Jurisdiction over Sanctions Proceedings

In response to RTT's ground that Petitioner's Motion for Sanctions is untimely, Petitioner (1) provides a summary of In re Beard and Pittman; (2) argues the judgment of the Probate Court did not become final until the date the Guardian *ad litem* received notice of the Circuit Court's Order dismissing the appeal as moot; (3) generally avers without any legal authority that RTT's appeal was interlocutory because no permanent guardian or conservator

had been appointed for Ms. Sjoberg; and (4) argues that Petitioner's claim pursuant to Rule 11was timely even if Petitioner's claim under the Act was not. There is simply no case law in the country that supports Petitioner's arguments.

As a threshold matter, Petitioner misconstrues the law regarding final judgments, and Petitioner's Motion for Sanctions pursuant to the Act was untimely. Petitioner cites and summarizes In re Beard and Pittman, but does not offer any explanation as to how these two cases support the notion that Petitioner's Motion was timely. In fact, those cases do just the opposite.

Petitioner is correct in stating that "[b]oth Pittman and In re Beard [sic] analogize SCFCPSA motions for sanctions to the post-trial motion to alter or amend under Rule 59(e) SCRCP." (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., p. 8). In Pittman, the defendant filed a motion for sanctions over two months after the court granted defendant's motion for summary judgment. The Court of Appeals held the defendant's motion was untimely because it was not filed within ten (10) days of the judgment, and the trial judge no longer had jurisdiction over the case. Pittman v. Republic Leasing Co., Inc., 351 S.C. 429, 432 (S.C. Ct. App. 2002). Likewise, in In re Beard, Watkins, the plaintiff in the underlying action, attempted to amend his Complaint to add a cause of action for legal malpractice and breach of fiduciary duty against Beard. In re Beard, 359 S.C. 351, 355-356 (S.C. Ct. App. 2004). Claiming Watkins's motion to amend was frivolous, Beard filed a motion for sanctions "almost one full year after the trial court denied Watkins's motion to amend his complaint to include Beard as a defendant." Id. at 359. The Court of Appeals dismissed Beard's motion under the Act as untimely for that reason. Id.

Similarly, the Probate Court no longer had jurisdiction to hear Petitioner's Motion for Sanctions after December 14, 2012, ten (10) days after this Court denied RTT's Motion to

Reconsider the Orders for Release of Client Files. Petitioner misapprehends what constitutes a "final judgment" in this matter. The Court's Orders to release Ms. Sjoberg's estate documents were directed to RTT, a non-party. RTT objected on the basis of the legality of the Orders and privilege. The December 4, 2012 Order Denying RTT's Motion to Reconsider the Orders for Release of Client Documents was a final judgment as to RTT, and Petitioner's ten (10) day deadline began to run on that date.

Because appeals are only available where there is a final judgment, RTT could appeal the Release Orders. RTT's appeal was not interlocutory, which is emphasized by the fact that the Circuit Court accepted the appeal and did not dismiss it on that ground. Moreover, Petitioner did not challenged RTT's appeal on the ground that it was interlocutory, and Petitioner waived that argument by not raising it during the appeal and cannot do so now. Notably, Petitioner also avoids acknowledging Holmes v. B. Cooper Cmty. Hosp., Inc., 408 S.C. 138 (2014), in which the Supreme Court held that a notice of appeal does not deprive the lower court of jurisdiction to consider a timely post-trial motion.

Finally, Petitioner's claim pursuant to Rule 11 is also untimely. Rule 11 does not set forth a time limit for filing a Motion for Sanctions within the Rule itself, and no appellate court in South Carolina has determined what the appropriate deadline should be. However, a motion for sanctions filed one year and nineteen days after this Court entered a final order on the matter is unreasonable and untimely as a matter of law.

In both Pittman and In re Beard, the appellants only sought to challenge the appropriateness of the timing for sanctions under the Act, which the Court of Appeals held was untimely in both cases. Pittman does not include any discussion regarding a motion under Rule 11. And in In re Beard, the timing to file a motion for sanctions under Rule 11 was not a ground

for appeal before the court, so the court instead ruled on the merits of the Rule 11 motion. Likewise, in Russell, a case decided two years after In re Beard and cited by Petitioner, the Court of Appeals expressly declined to resolve this issue because it was not before the court:

> We do distinguish between the FCPSA and the Rule 11 sanctions. There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment. *See Ex parte Beard,* 359 S.C. at 359–60, 597 S.E.2d at 839 (holding that a motion for sanctions pursuant to the FCPSA must be filed within ten days of notice of entry of judgment but not a motion under Rule 11). **As a result, we decline to address what time limit is proper with regard to the Rule 11 sanctions because the issue is not before us.** However, since the motion made pursuant the FCPSA is proper it is only logical that the Rule 11 motion was timely according to *Ex parte Beard. See The Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001) (**stating that criteria for Rule 11 sanctions are essentially the same as those for sanctions under the FCPSA).**

Russell v. Wachovia Bank, N.A., 370 S.C. 5, 20, FN 11 (2006) (emphasis added).

However, the 4th Circuit Court of Appeals has held that a delay of 14 months in moving for sanctions is unacceptable, even where the opponent of sanctions has not alleged prejudice or lack of notice. Hunter v. Earthgrains Co. Bakery, 281 F.3d 144 (4th Cir. 2002). Moreover, other states that have addressed this issue apply a reasonableness test. For example, the North Carolina Court of Appeals held that although Rule 11 does not specify a time limit for filing a sanctions motion, "a party should make a Rule 11 motion within a reasonable time after he discovers an alleged impropriety." Griffin v. Sweet, 136 N.C. Ct. App. 762, 765, 525 S.E.2d 504, 506 (2000), citing Rice v. Danas, Inc., 132 N.C. Ct. App. 736 (1999) and Renner v. Hawk, 125 N.C. Ct. App. 483, 491 (1997). It defies reason to argue that a person may be subject to sanctions under Rule 11 indefinitely. Naturally, there must be some limitation.

Here, Petitioner waited to file her motion over one year after this Court entered a final order denying RTT's Motion to Reconsider. If the party seeking sanctions has two different

times in which to bring a claim relating to the exact same conduct, each claim would be subject to two separate appeals. RTT does not take the extreme position that Petitioner's deadline to file her Motion pursuant to Rule 11 was also ten (10) days as required for all other post-trial motions; however, RTT does contend that the motion must be made within a reasonable time, and over a year after Petitioner was on notice of all of the relevant facts that form the basis for her Motion is unreasonable.

D. Due Process

After a lengthy discussion regarding waiver of personal service verbatim to that contained in Petitioner's Motion for Sanctions, Petitioner asserted that RTT's Due Process arguments were frivolous because personal service was waived by Ms. Sjoberg.

Petitioner fails to acknowledge that an incompetent person cannot hire an attorney who can waive personal service. Nor can an incompetent person waive personal service herself. RTT fully briefed the Court on the reasons why this is the case, and included a summary of an analogous opinion from the Third Circuit Court of Appeals in In re Nash, 799 So.2d 1271 (3d. Cir. 2001). (RTT's Mem. in Supp. of Rule 59(e) Mot. to Recons., p. 17). Ms. Sjoberg was never personally served, and RTT's argument regarding Due Process is not frivolous for that reason.

E. Applicability of Rule 11 and the Act to Notice of Appeal and Grounds for Appeal

Petitioner is silent as to the applicability of Notice and Grounds for Appeal to motions for sanctions pursuant to the Act. And without analysis, Petitioner concludes Rule 11 applies to the Notice of Appeal and Grounds for Appeal. (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., p. 16). Although Petitioner has never supported that conclusion with any legal authority, in reply, RTT reincorporates its previous argument found in its Motion in Opposition to Motion for Sanctions on pages 28-29 as follows:

Rule 11, like all the South Carolina Rules of Civil Procedure, is applicable to matters in "the Court of Common Pleas and . . . all South Carolina courts in suits of a civil nature whether cognizable as cases at law or in equity, subject to certain exceptions contained in Rule 81. Rule 81 provides the rules shall apply to every trial court of civil jurisdiction within the state and shall apply insofar as practicable in magistrates' courts, probate courts and family courts to the extent they are not inconsistent with the statutes and rules governing those courts." Karen L. Huelson, A Snapshot of the South Carolina Court System, S.C. Law., November 2012, at 34, 38 (citing Rule 1, SCRCP and Rule 81, SCRCP). Conversely, "[t]he S.C. Appellate Court Rules . . . specify the procedures for appeals, petitions and motions before the Supreme Court and the Court of Appeals. They also contain rules governing the conduct, discipline, continuing legal education and other obligations of attorneys and judges in South Carolina, as well as the admission of attorneys to the practice of law." Id. at 34.

"Rule 74 [of the South Carolina Rules of Civil Procedure] makes clear that appeals from inferior courts or administrative agencies are governed by statutes providing for such appeals." Appeals from the probate court to the circuit court are governed by the probate code. See, generally, S.C. Code Ann. § 62-1-308 (Supp. 2012). The Probate Code does not provide for sanctions related to appeals.

Because the Court lacks any authority under the Act or Rule 11 to issue sanctions relating to appeals, the Court should have denied Petitioner's Motion to the extent it sought sanctions for the filing and signing of the Notice of Appeal and the Grounds for Appeal. Further, even if the Act and Rule 11 allowed sanctions for frivolous appeals, the power to sanction a party for conduct related to an appeal would lie in the appellate court, not the trial court. That rule applies to all filings addressed to the appellate court, including any notice and grounds for appeal, writs,

whether for mandamus or certiorari, or otherwise. To find any other way would allow a trial court to make a decision regarding whether or not it is frivolous for a party to challenge the trial court's own order on appeal. As such, this Court lacked subject matter jurisdiction to consider whether the appeal, or any of the filings associated therewith, was frivolous.

Conclusion

Wherefore, RTT respectfully requests the Court reconsider and rescind its Order Granting Motion for Sanctions dated January 2, 2015. The undersigned affirms, pursuant to SCRCP 11(a), that consultation with opposing counsel is not required.

By signing this Memorandum in Reply to Petitioner's Memorandum in Opposition to RTT's Rule 59(e) Motion to Reconsider Order Granting Sanctions, we certify that we have read this Memorandum, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

Respectfully submitted,

Robert P. Wood

Warren C. Powell, Jr.

Caitlin C. Heyward

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Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Columbia, SC
March 17, 2015

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 27th day of February 2014, I served ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Reply to Petitioner's Memorandum in Opposition to Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rite Bragg Caughman, Esquire
Adams & Reese, L.L.P.
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Arthur K. Aiken, Esquire
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2231 Devine Street
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Laura J. Fetner

Columbia, South Carolina

2015CP4004376O

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
APPEAL FROM THE PROBATE COURT

Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S NOTICE OF INTENTION TO APPEAL ORDER GRANTING MOTION FOR SANCTIONS AND ORDER DENYING MOTION TO RECONSIDER

JEANNETTE W. McBRIDE
C.C.P. & G.S.
2015 JUL 20 PM 12:15
RICHLAND COUNTY
FILED

TO THE COURT AND COUNSEL OF RECORD:

Robert J. Thomas ("Mr. Thomas") and Rogers Townsend & Thomas, PC ("Rogers Townsend"), appeal the Orders of the Honorable Jacqueline D. Belton, Richland County Probate Court Judge, Granting Motion for Sanctions entered on January 2, 2015, and the Order Denying Motion to Reconsider entered on July 13, 2015. Mr. Thomas and Rogers Townsend received notice of the January 2, 2015, Order on January 5, 2015. Mr. Thomas and Rogers Townsend timely filed a Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions on January 15, 2015. On July 13, 2015, the Court entered the Order Denying Motion to Reconsider denying Mr. Thomas' and Rogers Townsend's Rule 59(e) Motion to Reconsider Order Granting Motion

for Sanctions. Mr. Thomas and Rogers Townsend received notice of the entry of the July 13, 2015, order on July 13, 2015.

Respectfully submitted,

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Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Columbia, South Carolina
July 17, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
APPEAL FROM THE PROBATE COURT

Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

CERTIFICATE OF SERVICE

RICHLAND CO.
FILED
2015 JUL 20 PM 12: 15
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 17th day of July, 2015, I served the ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Notice of Intention to Appeal Order Granting Motion for Sanctions and Order Denying Motion to Reconsider*** upon the following party via U.S. Mail, addressed as follows:

Art Aiken, Esquire
2231 Devine Street
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Bea Hightower, Esquire
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Rita Caughman, Esquire
1301 Gervais Street #1920
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Micheal J. Polk, Esquire
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Laura J. Fetner

Columbia, South Carolina

RICHLAND COUNTY
FILED
2015 JUL 20 PM 12: 15
JEANNETTE W. McBRIDE
C.C.P. & G.S.

FILED

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF ROBERT J. THOMAS
COUNTY OF RICHLAND)

12 SEP 18 PM 4:24

AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C

I make this affidavit for the use of the Court and declare under oath that the following facts are true.

1. I met Mary Beth Moore in the fall of 1952, when I was a freshman in law school. I have known her ever since. Back when I was in law school I became very good friends with her and the women she shared an apartment with.

2. Years later, Mary Beth met and married Stig Sjoberg (pronounced Steeg See Burg), from Sweden. They and we (my wife, Barbara, and I) remained friends and frequently got together socially.

3. For most of the 60 years of our friendship I have been Mary Beth's lawyer, and my law partner, Eugene F. Rogers, served as Stig's lawyer until Stig's death. I have also provided legal advice to Paula Sjoberg Saine (Mary Beth's daughter) in a confidential personal matter not related to Mary Beth.

4. Before Paula filed this lawsuit, Paula knew that I represented Mary Beth in her estate planning and in her business affairs.

5. One morning I visited Paula at Mary Beth's home at Paula's request because Paula was interested in Mary Beth's estate plan.

6. Mary Beth is physically weak and very delicate, but her mind was fairly clear in all of 2011. She paid her bills herself and was proud that she always paid them on time. She also enjoyed playing bridge. I point these out to say that when these petitions were filed in May 2011, Mary Beth's mental capacity seemed fine to me and certainly sufficient to make an informed decision about whom her lawyer should be, and certainly sufficient to make a will.

7. Later, when Mary Beth was in HealthSouth recovering from an elbow replacement, Paula took her car keys and her automobile. Paula did this without discussing it with Mary Beth or me. Paula also took Mary Beth's checkbook. This greatly upset Mary Beth.

8. Mary Beth frequently told me she was angry with Paula. At Mary Beth's request, I sent emails to Paula, telling her that Mary Beth was angry about Paula's taking the car and the checkbook, and I asked for their return. I suggested that she (Paula) and I meet to discuss the issue. I offered to take her to lunch or to come by her home one morning (as I had done before). I sent Paula emails on March 28, March 29, April 4, and April 6, 2011. I never received a response. In the last email, I stressed the importance of the meeting and stated that Mary Beth is so angry she is contemplating some decisions that could adversely affect Paula and her family.

9. Instead of receiving a response, in late April 2011, I received and exchanged voice mail messages with Rita Bragg Cullum on Paula's behalf. When Rita and I eventually talked, Rita questioned Mary Beth's capacity to make a will. I say this to emphasize that Rita (Paula's attorney) knew that I represented Mary Beth in her estate planning activities.

10. Rita then told me that she had drafted some documents and wanted to have copies delivered to me. I inferred that she was suggesting something to be done cooperatively, so I offered to stop by her office to pick them up. She then said she had not completed drafting them but would send them to me when completed. I suggested instead that she could scan them and email them to me. She said she would do one or the other. But I never heard from Rita again. I say this to emphasize that Rita knew that I represented Mary Beth in the very matter she would soon raise in her guardian and conservatorship petitions.

11. I learned on Saturday, May 14, that contrary to what she told me, Rita had proceeded *ex parte* on May 10, and obtained what I learned were two orders issued without

notice to me or Mary Beth, one appointing Paula temporary conservator and the other appointing Paula temporary guardian.

12. I am informed and believe that Mary Beth was not properly served with process in these cases, that Mary Beth was effectively denied counsel of her choice to challenge the allegation of incapacity, and that Mary Beth was effectively denied the opportunity to attend the hearing in which her capacity would be determined. I am therefore informed and believe that when Mary Beth's accounts were frozen and she was denied access to her funds, she was deprived of her property without due process of law.

13. I am further informed and believe that the orders commanding my law firm and me to produce documents were entered by a court that did not have personal jurisdiction over Mary Beth, and I therefore believe that if I were to reveal Mary Beth's will and other estate planning documents or any of my file to Bea Hightower, I would be violating the attorney-client privilege and would be subject to discipline by the South Carolina Supreme Court. I am not willing to do that. Mary Beth's will is confidential, Mary Beth fully expected me to keep it confidential.

14. I am also concerned that even a lawful court order would not allow me to turn my file or Mary Beth's estate planning documents over to anyone. Specifically, Rule 1.14(c) of the South Carolina Rules of Professional Conduct only allows me to reveal information about a client with diminished capacity (which I do not know that Mary Beth has) to the extent reasonably necessary to protect Mary Beth's interests. There is no exception in Rule 1.14 for complying with a court order such as there is in Rule 1.6. I cannot understand how producing documents to a lawyer (Bea Hightower) nominated by Rita to serve as Mary Beth's guardian ad litem could possibly serve to protect Mary Beth's interests since Rita's client is directly adverse

to Mary Beth. Finally, I do not know at all that Mary Beth lacks testamentary capacity. If Mary Beth has testamentary capacity, then the contents of her current will and estate planning documents could not possibly be relevant to the court or a potential heir.

Robert J. Thomas

Sworn to before me this 18TH day of September, 2012.

Notary Public for South Carolina
My commission expires 3-20-2019

FILED
2014 MAY 16 PM 4:29
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

AFFIDAVIT OF ROBERT P. WOOD, ESQ.

PERSONALLY APPEARED before me Robert P. Wood, Esq., who, being first duly sworn, deposes and says that the following facts are true:

1. I have been a member of the South Carolina Bar since 1980 and a shareholder in the law firm Rogers Townsend & Thomas, PC for some time.

2. I am also a member of the Virgin Islands Bar Association, the American Board of Trial Advocates, the Richland County Bar Association, the South Carolina Bankruptcy Law Association, the American Bar Association, and the John Belton O'Neall Inn of Court.

3. I am listed in the Best Lawyers in America, Super Lawyers for Business Litigation and Midlands Legal Elite.

4. Following this Court's Order for Release of Client Documents of July 31, 2012, I became involved in this action on behalf of Bob Thomas and the firm and represented them both until the appeal was dismissed as being moot. As a result, I am knowledgeable about the facts

and circumstances underlying the Petitioner's Motion for Sanctions, including the facts and matters stated herein.

5. After the firm was notified that the Court had issued an order on July 31, 2012, requiring it to turn over to Ms. Saine the estate planning documents of Ms. Sjoberg, the firm communicated with the Court that the firm be allowed to examine the Court's file prior to producing documents. The Court verbally denied the request.

6. After having received various documents from the Court on October 18, 2012, the Court notified the firm on the afternoon of October 24, 2012, that it had until October 26, 2012, to file a supplemental brief related to the firm's motion asking the Court to reconsider its Order of July 31, 2012, and its Amended Order of August 24, 2012.

7. The Court denied the firm's Motion for Reconsideration on December 4, 2012, making the deadline for all post-trial motions due on or before December 14, 2012.

8. Between lawyers and paralegals, the firm expended 183.42 hours towards examining and analyzing the issues and conflicts presented by the firm's ethical obligations to its client in the face of an order of the Court. Ms. Sjoberg was never charged for any of the firm's time in dealing with these matters.

9. Attached as Exhibit 1 is a true and accurate copy of an email I received from Judge Jacqueline Belton dated September 6, 2012. RTT 718

10. Attached as Exhibit 2 is a true and accurate copy of an email I received from Judge Jacqueline Belton dated September 10, 2012. RTT 719-721

11. Attached as Exhibit 3 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 3:08 pm. RTT 722-725

12. Attached as Exhibit 4 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 4:11 pm. RTT 726

13. Attached as Exhibit 5 is a true and accurate copy of an email I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 4:43 pm. RTT 727

14. Attached as Exhibit 6 is a true and accurate copy of an email to I sent to Jonathan Spitz and Kim Lewis of the Probate Court dated September 13, 2012 at 6:36 pm. RTT 734

15. Attached as Exhibit 7 is a true and accurate copy of an email exchange between myself and Judge Jacqueline Belton, including an email from me to Judge Belton dated September 14, 2012 at 5:26 pm and an email in response from Judge Belton to me dated September 14, 2012 at 5:58 pm. RTT 735-736

16. Attached as Exhibit 8 is a true and accurate copy of the Memorandum in Support of Motion to Reconsider filed in the Probate Court on September 17, 2012. RTT 598-606.

FURTHER AFFIANT SAYETH NOT.

Robert P. Wood

SWORN and subscribed to before me
this 15th day of May, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 01.22.2018

EXHIBIT 1

Wood Exhibits

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 06, 2012 9:42 AM
To:	Robert P. Wood; Amy Landers May
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject:	Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048
Attachments:	KMBT20020120905170144.pdf

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e).
Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

EXHIBIT 2

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Monday, September 10, 2012 1:46 PM
To:	Robert P. Wood
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject:	RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

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Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May

Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Jackie Belton

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Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT 3

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 3:08 PM
To: Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; 'JACQUELINE BELTON'
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

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Sent: Monday, September 10, 2012 1:46 PM
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Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

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Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; KIM LEWIS; Jonathan Spitz

Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

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attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

EXHIBIT 4

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:11 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

I would also like to see the notice of the hearing held on May 9 and proof of service of that notice.

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

EXHIBIT 5

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:43 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

Please also send me (or make available to me) any pleadings, motions, reports, or briefs filed by Mike Polk.
Thanks.
Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
120 Executive Center Dr
Columbia, SC 29210

Direct 803.744.1273
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

EXHIBIT 6

Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 6:36 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Cc: JACQUELINE BELTON (BELTONJ@rcgov.us)
Subject: Sjoberg

Could you also scan and email to me:

The report by the visitor who went to Ms. Sjoberg's residence.

I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send me that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

EXHIBIT 7

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Friday, September 14, 2012 5:58 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS; mike@belserpa.com
Subject: RE: Sjoberg

Dear Mr. Wood:
Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

Thanks and have a good weekend.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Friday, September 14, 2012 5:26 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS
Subject: Sjoberg

Judge Belton: I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday.

If you are pressed for time, the main things I'd like to see as soon as possible are

the affidavit of service of the summonses and petitions on Mrs. Sjoberg;
the affidavit of service of the notice of the 5/9/11 hearing; and
evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally.

All these go, of course, to whether the court had personal jurisdiction over Ms. Sjoberg and whether she was afforded timely notice and an opportunity to be heard before entry of the appointment orders that resulted in the order requiring our firm to turn over material that we feel is covered by the attorney-client privilege and the work product doctrine.

But I would still like to see the other documents when you can get to them. I have, by the way, now seen Dr. Nelson's report.

Thanks.

Bob Wood

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

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Fax 803.343.7017

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NOTICES
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EXHIBIT 8

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE PROBATE COURT Case Nos. 2011-GC-40-00047 2011-GC-40-00048
EX PARTE ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN AND CONSERVATOR.	**MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER**

TO THE COURT AND TO COUNSEL OF RECORD:

Robert J. Thomas and the law firm of Rogers Townsend & Thomas, PC (the "Firm") respectfully ask the Court to reconsider its Order of July 31, 2012, its Amended Order of August 24, 2012 (collectively the "Production Orders"), and its oral order declining to allow the Firm to review the entire Probate Court file in these cases.

Procedural Background

On July 31, 2012, this Court entered an order requiring South Carolina attorney Robert J. Thomas and the Firm to produce wills, powers of attorney, and similar documents, including drafts of them, belonging to Mary Beth Sjoberg to the Court. On August 24, the Court amended the order somewhat. Thereafter, Amy Landers May (an attorney in the Firm) asked the Court to allow her to review the court's entire file. The Court declined (citing its standard policy) but produced specific documents it felt relevant to the situation.

Mr. Thomas and the Firm thereafter filed a motion to reconsider and asserted a claim of attorney-client privilege and work product doctrine pending review of the Court's file. The Firm

stated that before it would exercise the permission granted by Rule 1.6(b)(7) of the South Carolina Rules of Professional Conduct to produce the requested documents, it would make an independent evaluation as to whether the Court was authorized to enter the Orders, and it would make an independent evaluation as to the existence, legality, scope, and extent of the orders appointing Paula Sjoberg Saine as Temporary Guardian and Conservator and appointing Bea Hightower as Guardian ad Litem.[1] The Firm has completed its evaluation and respectfully reports that it is not convinced the Court was authorized to enter the Production Orders, and the Firm is not convinced that the Production Orders allow it to reveal information otherwise protected by the attorney-client privilege or the work product doctrine.

The Court set a deadline of Friday, September 14, to file this brief but extended the deadline until today. Thereafter the Court sent an email to Mr. Thomas and the Firm reading in part:

> [I]f the basis for not turning over the original Will to the Court is the jurisdictional issues [raised by the Firm], then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.
>
> Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-

[1] Such an inquiry is required by Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct ("Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law").

mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.[2]

The Court has not opened its file to the Firm and has not produced any of the specific documents requested by the Firm. Of particular significance to the Firm are the affidavit of service of the summonses and petitions on Mrs. Sjoberg; the affidavit of service of the notice of the May 9, 2011, hearing; and evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally. But the Firm also requested (and has not received) copies of the summonses and petitions in these cases; any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf; the notice of the hearing held on May 9; any pleadings, motions, reports, or briefs filed by Attorney Mike Polk; the report (if any) by a visitor who might have gone to Ms. Sjoberg's residence as required by law; any order indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced; the order directing Attorney Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney; and the reports of Dr. Nelson and Dr. Brannon.

Analysis

We will start with the Court's email of 5:58 PM on Friday, September 14, 2012.

In that email the Court did not state how Mr. Johnson's failure to raise certain issues mattered since the Court had previously found that Ms. Sjoberg did not have the capacity to hire Mr. Johnson. See Order of December 2, 2011, Confirming Ongoing Incapacity and Regarding Motion to Strike Appearance of Counsel (pgs. 7 -8) ("Mrs. Sjoberg has not possessed

[2] Out of an abundance of caution, we are treating this email as a court order because we assume the Court meant what it said.

and does not possess the capability to either engage or direct Mr. Johnson in an attorney-client relationship"). If Mr. Johnson were not Ms. Sjoberg's attorney, nothing he did, could have done, or should have done could possibly be binding on Ms. Sjoberg.

As to Attorney Polk's involvement, the Firm has not been provided a copy of the Court's file so it can see whether Mr. Polk even considered the jurisdictional and due process issues we are raising here. Furthermore, the Order appointing Mr. Polk did not give him authority to waive any of Ms. Sjoberg's rights, including the right to challenge jurisdiction, to waive due process, or to waive the attorney-client privilege or the benefits of the work product doctrine.

Now we will move to the merits of the motion.[3]

Robert J. Thomas has known Mary Beth Moore Sjoberg since 1952. Mr. Thomas has served as her attorney since the death of her husband several years ago (with one exception, when the firm of Ellis Lawhorne & Sims represented her by reviewing her estate planning documents and drafted a healthcare power of attorney for her[4]). Mr. Thomas has drafted numerous estate planning documents for her. More recently, Mr. Thomas helped Ms. Sjoberg create her present estate plan and helped her with her many conflicts with Paula Sjoberg Saine (her daughter). In the course of that representation, Mr. Thomas learned information about Ms. Sjoberg of a highly confidential manner. Due to the attorney-client privilege and work product doctrine, Mr. Thomas believes that Ms. Sjoberg fully expected this information to remain confidential and private, and Mr. Thomas expected to keep it that way.

---

[3] Most of the following facts are found in the so-far unsigned Affidavit of Robert J. Thomas (attested to be accurate by the Affidavit of Robert P. Wood due to Mr. Thomas's inability to execute an affidavit today).

[4] Whether that creates a conflict of interest is beyond the scope of this brief.

Paula has long known that Mr. Thomas represented Ms. Sjoberg regarding Ms. Sjoberg's estate planning issues and regarding the many disputes between Paula and Ms. Sjoberg. And Paula knew that when, in early May, 2011, she filed summonses and petitions seeking her appointment as guardian and conservator for Ms. Sjoberg.

Pursuant to SCRCP Rule 4(d)(2), the summonses and petitions had to be served on Ms. Sjoberg personally. The Court has declined to allow us to see any proof of service of the summons on Ms. Sjoberg personally as required. We do not believe they were served on Ms. Sjoberg personally and have not seen any evidence that they were. Until we see proof that the summonses and petitions were served on Ms. Sjoberg personally, we cannot presume that the Court has, or ever has had, personal jurisdiction over Ms. Sjoberg. Hence, any order requiring Mr. Thomas or the Firm to do anything is void.

Ms. Sjoberg was also entitled to be served personally with notice of the hearing whereby Paula sought to have herself appointed Guardian and Conservator for Ms. Sjoberg, and Ms. Sjoberg was entitled to be present at the hearing in person. See S.C. Code §§ 62-5-303 (a) and (b) (appointment of a Guardian) and 62-5-407 (a) and (b) (Conservator). See also S.C. Code § 62-1-401 requiring notices be given to interested parties (of which Mr. Thomas was one). Nothing in the file shows that Ms. Sjoberg was personally served with notice of the hearing or given notice of a chance to attend it in person. When the Court appointed a guardian and conservator (and froze Ms. Sjoberg's bank accounts) without having had personal jurisdiction over Ms. Sjoberg and without having afforded her notice and an opportunity to be heard, the Court denied Ms. Sjoberg due process of the law, and the ensuing orders were simply not authorized.

In Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. The Court said:

> The order of April 22, not appealed from, was clearly void, and of no effect whatever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...
>
> Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

With all due respect to the Court, the Firm has decided it will not honor any order where the Court that issued it does not have jurisdiction and has denied the Firm's client due process.

Also, when this suit was commenced, Ms. Sjoberg was entitled to counsel of her choice. Mr. Thomas was Ms. Sjoberg's choice. S.C. Code §§ 62-5-303(b) and 62-5-407(b) provide that: "unless the person to be protected has counsel of his own choice, [the court] shall appoint an attorney." Section 407(b) goes further, stating that if the person "already has representation by an attorney that attorney shall act as his guardian ad litem."

By all accounts, Mr. Thomas was Ms. Sjoberg's attorney. Pursuant to Rule 17(c), an allegedly incompetent party's "representative, such as a general guardian, committee, conservator, or other like fiduciary," "may ... defend on behalf of" the allegedly incompetent person.

The denial of Ms. Sjoberg's choice of counsel was the denial of this substantial right. In Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707 (2005), the South Carolina Supreme Court reversed an order disqualifying a party's attorney and held that the order was immediately

appealable because an individual has the "right to be represented by an attorney of ones choosing," which is a substantial right.

Paula did not help the situation. She and her counsel knew that Mr. Thomas represented Ms. Sjoberg. Yet Paula failed to so notify the Court and proceeded as if she did not know of Mr. Thomas's existence.

Privileges

The attorney's duty of confidentiality is firmly established in South Carolina. See, e.g. State v. Love, 275 S.C. 55, 271 S.E.2d 110 (1980). These protections exist so that a client may have the "utmost confidence" that her secrets will remain secret, assured by her attorney's "pledge of law that such confidence should not be abused by permitting disclosure." South Carolina State Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). The attorney-client privilege is strong enough to survive death. State v. Doster, 276 S.C. 647, 284 S.E.2d 218 (1981).

Rule 1.6(b)(7), RPC, Rule 407, SCACR provides that the attorney's duty of confidentiality may be overridden by court order. "The acts of a court without jurisdiction" however "are without effect." DeWitt v. S. Carolina Dept. of Highways & Pub. Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980). Furthermore, as noted above, an attorney ordered to reveal information protected by the attorney-client privileged is required to assert on behalf of the client all nonfrivolous claims that a court order is not authorized. Cmt. 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

Review of Court's File

Finally, we respectfully request that the Court reconsider its order denying the Firm an opportunity to review its entire file.[5] "Judicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and [Art. I § 9 of] the state constitution." Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). Mr. Thomas and the Firm have no right or duty to reveal privileged documents and information absent an authorized court order, and they are entitled to question the authority of this Court to enter such an order. Nothing could be more sensitive and confidential than a living person's will and estate planning documents. Mr. Thomas and the Firm owe all of their current and former clients the duty to protect their confidential information from parties occupying potentially adverse positions.

Conclusion

Robert J. Thomas and Rogers Townsend & Thomas, PC respectfully ask the Court to reconsider its orders requiring them to produce Ms. Sjoberg's estate planning documents and other confidential information, and they ask the Court to reconsider their request to see the Court's file related to these proceedings.

[5] The Court's 6 PM email reads in part, "We can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised.... Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon." The Court did not extend the Firm's deadline for filing this brief.

All of which is respectfully submitted.

s/ Robert P. Wood

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September ___, 2012.

RTT SJOBERG 000608

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

AFFIDAVIT OF D. CRAVENS RAVENEL

PERSONALLY APPEARED before me D. Cravens, Ravenel, who, being first duly sworn, deposes and says that:

1. I am a partner in the law firm of Baker Ravenel and Bender, L.L.P. and have been licensed to practice law in the State of South Carolina since 1970.

2. I have had an AV rating from Martindale Hubbell for many years and am a member of numerous professional associations, including the Richland County Bar Association and the South Carolina Defense Trial Attorneys Associations. I have received a number of awards and honors during my years of practice, including the Matthew J. Perry Civility Award and the Richland County Bar Civic Star Award. I was voted a Top Lawyer by the American Register, selected by my peers to appear in the publication Best Lawyers in America, and chosen as a Super Lawyer. I was also elected as a Fellow to the American College of Trial Lawyers.

3. One of my areas of practice includes Professional Liability and Ethics, and I chaired the South Carolina Supreme Court's Committee on Character and Fitness from 1989 – 2004.

4. I have been asked to review the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend & Thomas, P.C. as they relate to the above-captioned matter and, specifically, Mr. Thomas and his firm's response to an order of this court requiring that certain estate planning documents pertaining to Mr. Thomas' representation of his client Mary Beth Moore Sjoberg be produced to the court.

5. I have been provided copies of and have reviewed the following documents:

a. Order for Release of Client Documents filed July 31, 2012;
b. An Amended Order for Release of Documents from this Court filed August 24, 2012;
c. Robert J. Thomas and Rogers Townsend & Thomas, PC's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File;
d. Robert J. Thomas and Rogers Townsend & Thomas, PC's Memorandum in Support of Motion to Reconsider;
e. An Affidavit of Robert J. Thomas dated September 18, 2012;
f. Robert J. Thomas and Rogers Townsend & Thomas, PC's Second Memorandum in Support of Motion to Reconsider;
g. A. Bea Hightower, Guardian ad Litem's Memorandum in Opposition to Motion to Reconsider, dated November 9, 2012;
h. Order Denying Motion to Reconsider filed December 4, 2012;
i. Robert J. Thomas and Rogers Townsend & Thomas, PC's Notice of Intent to Appeal and Grounds for Appeal;
j. Petitioner Paula S. Saine's Motion for Sanctions against Robert J. Thomas and Rogers Towsend & Thomas, PC dated January 21, 2014; and
k. A timeline of events and filings relating to the underlying matter.

6. I have also examined the law cited by Mr. Thomas and his firm, including Rule 1.6 of the South Carolina Rules of Professional Conduct and comment 14 to Rule 1.6.

7. Based upon my review of the documents, my experience as a trial lawyer and in the field of Professional Liability and Ethics, it is my opinion, to a reasonable degree of legal certainty, that Mr. Thomas and his firm acted in accordance with the law in filing and signing

their Motion for Reconsideration, Memorandum in Support of Motion for Reconsideration, Second Memorandum in Support of Motion for Reconsideration, Notice of Intent to Appeal, and Grounds for Appeal; that these filings were not frivolous; that these filings and the arguments contained therein were warranted under existing law; that these filings were not intended to harass or injure another party, were not brought merely for delay or for any other purpose other than the proper protection of the confidences and privileges of their client, Mary Beth Moore Sjoberg.

8. It is my opinion that given Ms. Sjoberg's declaration of incapacity and the facts and circumstances of the underlying case, that Mr. Thomas had little choice but to follow the mandates of Rule 1.6, SCRPC, and investigate the matter and circumstances. It is my opinion that the decision to oppose the production of Ms. Sjoberg's estate planning documents was not frivolous, was based upon the client's interests in having her attorney safeguard her confidences, and that Mr. Thomas and his firm had good grounds to support their decision.

9. It is my opinion that Mr. Thomas' actions and those of his firm were reasonable under the facts and circumstances of the case and were consistent with the actions of a reasonable attorney.

FURTHER AFFIANT SAYETH NOT.

D. Cravens Ravenel, Esq.

SWORN and subscribed to before me
this 15th day of May, 2014.

Patricia Ruggiero (L.S.) n/k/a Patricia Ruggiero
Notary Public for South Carolina
My Commission Expires: 4-22-2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2014 MAY 16 PM 4:29
RICHLAND COUNTY, S.C.

AFFIDAVIT OF ROBERT J. THOMAS, ESQ.

PERSONALLY APPEARED before me Robert J. Thomas, Esq., who, being first duly sworn, deposes and says that the following facts are true:

1. I have been practicing law in South Carolina since 1954.

2. I am one of the founding partners of the law firm of Rogers, Townsend, & Thomas, P.C.

3. I have never been sanctioned by a Court, including sanctions under Rule 11 of the South Carolina Rules of Civil Procedure or under the South Carolina Frivolous Civil Proceedings Sanctions Act.

4. I am a past member of the Board of Governors, the House of Delegates, and am Past President of the Senior Lawyers Division. I served as chairman of the Bar's Practice and Procedure Committee. I am past president of the South Carolina Bar Foundation and the Richland County Bar Association.

5. In 1982, I accepted an invitation to become a fellow to the American College of Trial Lawyers, and I am still a fellow.

6. I have had an AV Peer Review Rating by Martin-Dale Hubbell for many years.

7. In 2009, the South Carolina Bar presented me with a Trial and Appellate Advocacy Award "In Recognition of Significant Contributions to Trial and Appellate Practices in South Carolina."

8. I have also been published as a Super Lawyer.

9. In my practice, I have appeared and represented clients in 106 completed appeals before the South Carolina Supreme Court, the South Carolina Court of Appeals, and the United States Court of Appeals for the Fourth Circuit.

10. As Ms. Sjoberg's friend and lawyer for approximately 60 years, she relied up me for legal services in her estate planning and business affairs. During that time, Ms. Sjoberg executed several Last Wills and Testaments and other estate planning documents, which I drafted.

11. Ms. Sjoberg valued her privacy and left her Last Will and Testament and many other estate planning documents in my care and trust for safekeeping.

12. In my position as both friend and attorney, I was very aware of the conflicts between Ms. Sjoberg and her daughter, Paula Saine. Ms. Sjoberg confided in me that she believed Ms. Saine was interfering with her independence. I was also aware that Ms. Saine wanted to break up the friendship of Ms. Sjoberg and Carl Caughman. On a number of occasions, I offered to mediate the difficulties between Ms. Sjoberg and her daughter. I was unable to resolve the conflicts between the two.

RJ #2

13. By virtue of my position as attorney to Ms. Sjoberg as well as my involvement in the matters involving my firm and the Court's order to produce certain estate planning documents of my client, I am familiar with the facts and circumstances of the underlying matter, including those described herein.

14. Prior to receiving the Court's order that I and the firm release certain confidential and privileged estate planning documents to the Court, neither I nor the firm were involved in the litigation between Ms. Saine and Ms. Sjoberg. We were not attorneys of record for any party to the litigation and were never served with a subpoena. We did not participate in the conference held on July 13, 2012 between the Court, Rita Cullum and Bea Hightower that preceded the order to release records.

15. I learned some time later that on May 9, 2011, the Probate Court held a status hearing regarding Ms. Saine's petitions to be appointed guardian and conservator. Neither I nor my client, Mary Beth Sjoberg, attended the hearing because neither of us received notice.

16. After I learned of Ms. Sjoberg's death, I delivered her Last Will and Testament to the Probate Court as required by section 62-2-901 of the Probate Code.

17. Attached as Exhibit 1 is a true and accurate copy of the Durable Power of Attorney of Mary Beth Sjoberg dated June 23, 2007, which was never filed. It did not grant Ms. Saine the power to accept service of process on behalf of her mother. RTT 6-7

18. Attached as Exhibit 2 is a true and accurate copy of the Health Care Power of Attorney of Mary Beth Sjoberg dated June 23, 2007. RTT 73-77

19. Attached as Exhibit 3 is a true and accurate copy of the Revocation of Durable Power of Attorney Dated June 23, 2007 of Mary Beth Sjoberg dated December 30, 2009. RTT 493-494

#3

20. Attached as Exhibit 4 is a true and accurate copy of the Last Will and Testament of Mary Beth Sjoberg dated November 12, 2010. Ms. Sjoberg left her Will in my care and trust for safekeeping. RTT 108-114

21. Attached as Exhibits 5, 6 and 7 are true and accurate copies of doctor's notes from Larry Nelson, M.D., Ms. Sjoberg's psychiatrist, dated April 18, 19, and 28, 2011, respectively. RTT 310, 308, 306

22. Attached as Exhibit 8 is a true and accurate copy of an email I received from Rita Cullum dated May 20, 2011, without the attachments. RTT 518

23. Attached as Exhibit 9 is a true and accurate copy of a Mini-Mental State Examination taken by Ms. Sjoberg on July 12, 2011. RTT 301

24. Attached as Exhibit 10 is a true and accurate copy of a Letter I wrote to Annie Bea Hightower dated August 3, 2012. RTT 1-2

FURTHER AFFIANT SAYETH NOT.

Robert J. Thomas

SWORN and subscribed to before me
this 15th day of May, 2014.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 01-22-2018

#4

EXHIBIT 1

COPY ORIGINAL HAS NOT BEEN RECORDED WAS LATE REVOKED ENTIRELY

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

DURABLE
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, Mary Beth Sjoberg, have constituted and appointed, and by these presents do constitute and appoint Paula S. Saine, as my attorney in fact with power:

a. to sign my name to checks, to endorse checks, to cash checks, to deposit checks, and to do all such things with respect to negotiable instruments other than checks.

b. to satisfy any mortgage which I now own or hereafter acquire.

c. to enter any lockbox in my name anywhere and to add to or remove any contents therefrom.

d. to withdraw and use for my benefit any money which I may have in any bank, savings or investment institutions.

e. to buy, sell, or transfer any stocks, bonds or investment securities in my name.

f. to collect and recover any sums of money or property due me and to prosecute any cause of action which I may have before any of the courts of this or some other state or of the United States.

g. to prosecute in my name, or in her own name on my behalf, any cause of action which I may have against any person or persons, in any court of this state, of any other state, of the United States or of any foreign country and to employ attorneys for such purposes.

This General Power of Attorney shall not be affected by physical disability or mental incompetence by me which might render me incapable of managing my own estate. The authority conferred herein is exercisable notwithstanding any subsequent physical disability or mental

MBS

incompetence on my part.

Should I become mentally disabled, my attorney shall not be required to file any statement or inventory with any court and shall not be required to post a surety bond.

All of which my said attorney is authorized to do as I might or could do if I were personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ~~21st~~ 23rd day of ~~May~~ June, 2007.

Mary Beth Sjoberg
Mary Beth Sjoberg

ATTESTATION

The foregoing Durable Power of Attorney was this 23rd day of June, 2007, signed, sealed, published and declared by the Principal as the Principal's appointment and empowerment of an attorney-in-fact, in the presence of us who at the Principal's request and in the Principal's presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Barbara H. Thomas
Witness 1

Witness 2

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared deponent and made oath that deponent saw the within named Principal sign, seal and as the Principal's act and deed deliver the within Power of Attorney and that deponent, with the other witnesses whose names are subscribed above, witnessed the execution thereof.

Barbara H. Thomas
Witness 1

Sworn to before me this 23rd day of June, 2007.

Notary Public for South Carolina
My Commission Expires: 8/2/10

EXHIBIT 2

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Sjoberg, hereby appoint:
(Principal)

Karl L. Sjoberg
(Name of Agent)

4800 Reamer Avenue
(Street Address)

Columbia, SC 29206
(City, State, Zip)

Home Telephone: (803) 787-2494
Cell Telephone: (803) 609-0395
as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section B, below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

RTT'SJOBERG 000073

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

_____

_____

_____

4. ORGAN DONATION (INITIAL ONLY ONE)

My agent may _____; may not __x___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL).

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 4 PARAGRAPHS)

(1) _____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to

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consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) [illegible] DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

(a) if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

(b) if I am in a state of permanent unconsciousness.

OR

(3) _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) ____ DIRECTIVE IN MY OWN WORDS:

_____

_____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that (INITIAL ONLY ONE):

[illegible] I do not want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

_____ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

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8. SUCCESSORS

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named.

A. First Alternate Agent: [Enter Name of Secondary Agent]

Paula S. Saine

Address: [Enter Address of Secondary Agent]

3105 Grace Hill Road, Columbia, SC 29204

Telephone: [Enter Phone Number of Secondary Agent]

Home (803) 738-1489

Cell (803) 261-4566

B. Second Alternate Agent: [Enter Name of Tertiary Agent]. None

Address: [Enter Address of Tertiary Agent]

Telephone: [Enter Phone Number of Tertiary Agent]

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

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BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 23rd day of June, 2007. My current home address is:

3825 Linwood Road
Columbia, SC 29205

Signature: Mary Beth Sjoberg

Name: Mary Beth Sjoberg

WITNESS STATEMENT:

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1
Signature: Barbara W. Thomas Date: June 23, 2007
PrintName: BARBARA W. THOMAS
Telephone: (803) _____
Residence Address: _____

Witness No. 2
Signature: Robert J. Thomas Date: June 23, 2007
Print Name: Robert J. Thomas
Telephone: (803) 227-2035
Residence Address: 5011 Quail Lane, Columbia, SC 29206

EXHIBIT 3

STATE OF SOUTH CAROLINA)
) REVOCATION OF *DURABLE* POWER OF ATTORNEY DATED JUNE 23, 2007
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS that I, Mary Beth Sjoberg, do hereby revoke, cancel and repudiate the *Durable Power of Attorney* wherein I appointed Paula S. Saine as my attorney in fact, which was signed and sworn to on June 23, 2007, in the County of Richland, State of South Carolina, and which may or may not have been filed for record in the Office of the Register of Deeds for Richland County, South Carolina.

WHEREFORE, having revoked my Power of Attorney referred to above, I do hereby request that it be stricken from the records of Richland County, South Carolina, such that it shall be null and void with no validity whatsoever, and I shall be returned to the status that I held prior to my executing such Power of Attorney.

WITNESS my Hand and Seal this 30th day of December, 2009.

Mary Beth Sjoberg
Mary Beth Sjoberg

The foregoing Revocation of *Durable Power of Attorney* dated December 30, 2010, was signed, sealed, published and declared by Mary Beth Sjoberg as and for her revocation of the authority of Paula S. Saine as her attorney in fact, and we, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

Carolyn Bicanic Brown of Columbia, South Carolina

Robert J. Saine of Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me the undersigned witness and made oath that she saw Mary Beth Sjoberg sign, seal and as her act and deed, deliver the within written REVOCATION OF *DURABLE POWER OF ATTORNEY* DATED December 30, 2009, that said witness together with the other witness whose name is also above subscribed witnessed the execution thereof.

Carolyn Brandon Brown
(witness)

SWORN to before me this 30th day of December, 2010

Notary Public for South Carolina
My Commission Expires: Aug 2, 2010

EXHIBIT 4

The original of this document has been retained for safekeeping in the office of Rogers Townsend & Thomas PC Attorneys at Law

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LAST WILL AND TESTAMENT
of
MARY BETH SJOBERG

I, Mary Beth Sjoberg, declare the following to be my Last Will and Testament this 12th day of November, 2010.

ITEM I

I direct that all debts of my estate be paid, but I direct that my Personal Representative ("PR") not waive any defenses that may be available. I also direct that my PR in her sole discretion may decline to pay off any debt before it is due.

ITEM II

I direct that all personal property, including household contents, automobiles or personal property be divided among the two families of Paula Sjoberg Saine and Karl Sjoberg, deceased, in such manner as they may agree. Nevertheless, I reserve the option of disposing of personal property in a list signed by me or in my own handwriting. In default of a memorandum by me or an agreement between the two families, I devise said property to Paula S. Saine.

ITEM III

STATEMENT OF INTENT: My late husband and I were blessed with two fine children, each of which gave us three fine grandchildren. Our son, Karl Sjoberg, died last year, leaving his widow, Lori, and their three children. I love all six grandchildren and wish to treat them all equally. Those grandchildren are:

The children of Paula and John Saine:

1. Jacob Lennart ("Jake") Saine
2. Mary Elizabeth ("Mary Lib") Saine
3. Elsa Katherine ("Elsa") Saine

The children of Lori and Karl Sjoberg:

1. Kalyn Marie Sjoberg ("Kalyn")
2. Ashton Kristina Sjoberg ("Ashton")
3. Lennsey Beth Sjoberg ("Lennsey")

MBS

With the foregoing explanation, I devise One Hundred Thousand Dollars ($100,000) each to Kalyn Marie Sjoberg, Ashton Kristina Sjoberg, and Lennsey Beth Sjoberg, but with respect to those under the age of twenty-five (25), I make these devises in trust to their mother as trustee to hold for them until each reaches the age of twenty-five (25). As a trustee, Lori Sjoberg shall have the powers hereinafter granted to a trustee, and I direct that she be authorized to serve without the requirement of any bond or undertaking to secure her faithful performance. These devises are not to be charged with any of the expenses of administration of the estate or with any death taxes that may be owed as a result of the estate or those devises, such taxes and expenses being payable from the residue of my estate. If not paid within one year from the date of my death, the devises are to bear simple interest at the rate of two (2%) percent calculated from the date of my death.

I do not make similar devises to Jacob Lennart ("Jake") Saine, Mary Elizabeth ("Mary Lib") Saine, and Elsa Katherine ("Elsa") Saine, because I am leaving the remainder of my assets to their mother with the knowledge that she will use the money and property left to her for beneficial purposes which will include the care, health, well being, and education of her children.

ITEM IV

I devise all the rest and residue of my estate to my daughter Paula S. Saine. The residue of the estate includes without limitation all real property: my home at 3825 Linwood Road, Columbia, SC; my second home on Hilton Head Island, South Carolina; my investment property on Millwood Avenue, Columbia, South Carolina; and my half interest in the Lake Murray property that I own as a tenant in common with Paula S. Saine. It may also include some funds in checking and investment accounts.

ITEM V

Beneficiary under age twenty-five. With respect to any devise to a beneficiary who has not attained the age of Twenty-five (25) years, or if any real property shall be devised to a person who has not attained the age of Twenty-five (25) at the time of my death, then such share or property shall immediately vest in such beneficiary, but notwithstanding the provisions herein, my trustee shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-five (25) years, using so much of the net income and principal of such share as the trustee deems necessary to provide for the proper medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the trustee deems advisable any other income or resources of such beneficiary or such beneficiary's parents known to the trustee. Any income not so paid or applied shall be accumulated and added to principal. Such beneficiary's share shall be paid over, distributed and conveyed to such beneficiary upon attaining age Twenty-five (25), or if such child shall sooner die, to such child's PR. Whenever my trustee determines it appropriate to pay any money for the benefit of a beneficiary, then such amounts shall be paid out by my trustee in such of the following ways as my trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, support and education of the beneficiary; (4) by my trustee using such amounts directly for the beneficiary's medical care, support and education.

MSS

ITEM VI

I nominate, constitute and appoint as PR of my estate Paula S. Sjöme, and I direct that she be authorized to serve without the requirement of any bond or undertaking to secure her faithful performance.

ITEM VII

Powers of Personal Representative and Trustee. My PR and my trustee are authorized in their absolute discretion with respect to any property, real or personal, at any time held under any provision of this will or a trust created by this will, and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my will or by statute or general rules of law:

1. **Retaining property.** To retain any property or undivided interests in property owned by me at the time of my death, including residential property, regardless of any lack of diversification or risk of non-productivity, as long as deemed by my PR or trustee advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the trust or even the entirety thereof

2. **Investing.** To invest and reinvest all or any part of my estate or the trust in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investments trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether made by me or my PR or trustee; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds; to establish, utilize and terminate accounts with security brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my PR and/or trustee may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account.

3. **Sales, exchanges, etc.** To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the trust, for cash or upon credit, to exchange any property of my estate or the trust for other property, at such times and upon such terms and conditions as my PR or trustee may deem best, and no person dealing with my PR or trustee shall be bound to see to the application of any monies paid.

4. **Registration of securities.** To hold any securities or other property in the name of my PR or trustee, as the case may be, in her own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

5. **Cash.** To keep all or any portion of my estate or the trust in cash and uninvested for reasonable periods of time, without liability for any loss in income by reason thereof.

6. **Stock rights.** To sell or exercise stock subscription rights or conversion rights and similar rights.

7. **Voting stock.** To refrain from voting or to vote shares of stock owned by my estate or the trust at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my estate or the trust.

8. **Mergers, reorganization.** To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my estate or the trust, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under My such plan, to accept and retain new securities received by my PR or trustee pursuant to any such plan, or exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as my PR or trustee may deem advisable in connection therewith.

9. **Borrowing.** To borrow money and to encumber, mortgage or pledge any asset of my estate or the trust for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in my PR or trustee.

10. **Leasing.** To enter for any purpose into a lease as lessor or lessee, with or without option to purchase, or renew for a term within or extending beyond the term of the trust.

11. **Developing.** To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12. **Repairing.** To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

HBB

13. **Collecting.** To collect, receive, and receipt for rents, issues, profits, and income of my estate or the trust.

14. **Insuring.** To insure, or to elect not to insure, the assets of my estate or the trust against damage or loss and my PR or trustee against liability with respect to third persons.

15. **Dual positions.** In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with herself in her separate, or any fiduciary capacity.

16. **Compromising and settling.** To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my estate or the trust as my PR or trustee, as the case may be, shall deem best.

17. **Agents, etc.** To employ and compensate agents, accountants, investments advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants and advisors deemed by my PR or trustee needful for the proper administration of my estate or the trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

18. **Principal and income allocations.** To determine irrespective of statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal notwithstanding any determination by the courts or by any custom or statute, and whether or not to establish depreciation reserves; however, the discretion granted herein is not absolute, but rather is subject to the standard of reasonableness and good faith to all beneficiaries, impartiality between income and remainder beneficiaries, and may only be exercised in a fiduciary capacity.

19. **Accounting.** To hold and retain the principal of my estate or the trust undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my PR's or trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof

20. **Payments.** To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my estate or the trust (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset; to distribute, in substitution for fractional interests in property, the entire interests in any property having a value equal to such fractional interests, (and to distribute cash, in addition to such entire interests in property, if necessary, in

order that the sum of such entire interests and cash shall be equal in value to such fractional interests), and to distribute such asset in kind at its appraised value.

21. **Exercising fiduciary powers.** To exercise any power herein granted with reference to the control, management, investment or disposition of my estate or the trust either as PR or trustee without having to declare in which capacity my PR or trustee is acting.

22. **In general.** In general, to exercise all powers in the management of my estate or the trust which any individual could exercise in such individual's own right, upon such terms and conditions as my PR or trustee, as the case may be, deems best, and to do all acts which my PR or trustee, as the case may be, deems necessary or proper to carry out the purposes of this will or the trust created by this will.

23. **Renunciation and disclaimers.** To disclaim and renounce any interest in any property that I may have at the time of my death; and to surrender, release, renounce, or disclaim any one or more of the powers given to my PR or trustee. (Any surrender, release, renunciation, or disclaimer shall be made by written instrument. After any power has been so surrendered, released, renounced, or disclaimed, it shall never again be exercised by any PR or trustee.)

24. **Combining and dividing trusts.** To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my trustee reasonably determines that the administration as a single trust (i) is consistent with my intent, and (ii) facilitates the trust's administration without defeating or impairing the interests of the beneficiaries; and to divide any trust into separate shares or separate trusts if my trustees reasonably deem appropriate and the division (i) is consistent with my intent, and (ii) facilitates the trust's administration without defeating or impairing the interests of the beneficiaries; or to divide any trust with an inclusion ratio (as defined in Code section 2642) of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

ITEM VII

If any beneficiary under this will should die at or near the same time I die under circumstances rendered it doubtful who survived whom, I direct that this will be administered as if the beneficiary predeceased me.

<SIGNATURE, WITNESSES, AND AFFIRMATION APPEAR ON THE NEXT PAGE>

MBB

In witness hereof, I have placed my hand and seal this 12th day of November, 2010.

Mary Beth Sjoberg

We, the undersigned witnesses, being sworn, declare that we saw the above Mary Beth Sjoberg sign the foregoing instrument in our presence and that we have signed as witnesses in her presence and in the presence of each other.

Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Signed and acknowledged by Mary Beth Sjoberg before me, and subscribed and sworn to before me by the other witness whose name appears above, this 12th day of November, 2010

Notary Public for South Carolina
My commission expires August 17, 2020

EXHIBIT 5

COPY

4/18/11 Phone call from Paula Sisini re: her Mother Mary Beth Sjoberg:

Mother remains very angry at daughter and blames her for not being able to have her car and live independently.

Dr. Sjoberg:

1) changed her locks to "keep daughter out"
2) threatened to call the police to "get her car" – Instructed her daughter to not give the car back and show police her letter if they come to see her.
3) changed her will to "leave everything to the Olivet Gospel Mission"
4) Tried to go to bank and change her bank account today. I told daughter to use the letter I wrote to try to diminish another party (Relative) from benefiting with this.
5) Is trying to force her [redacted]

CPS, P.A.
PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further disclosure is strictly prohibited.

She must have 24/7 help if confined to a Nursing Home – Assisted Care would not accept her.

I will see Mr Sjoberg tomorrow, after she will come in. She needs Neuropsychological testing –

D Zelson

RTT SJOBERG 000310

EXHIBIT 6

4/19/11 - 1 hour — Mary Beth Sjoberg, COPY

I met with Ms. Sjoberg + her daughter, Paula Sahne for 1 hour. Ms. S. remains extremely angry at her loss of Independence. In a fit of Anger she 1) Changed her door locks and 2) Closed out her checking account and Threatened to Change her will. I reviewed all circumstances with her again & encouragement to go back to the work & Paula tomorrow and straighten out her finances. She is very anxious in spite of Seroquel 100 mg TID & is not sleeping or eating well. She is more depressed & wants God to "take her" She did much better when she was on Symbyax. I am going to replace Remeron 15 mg & Zyprexa 5 mg q HS and replace Seroquel & Xanax 0.5 mg to take 1/2 tab BID-TID & 1/2 or 1 tab q HS for anxiety. I will see her in 10 days. I want to refer her for Neuropsych testing. She wants to think about this.

See April 28

Darrel Nelson

LOCPS, P.A.
PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further redisclosure is strictly prohibited.

EXHIBIT 7

COPY

04/21/2011 Mary Beth Sjoberg. I received an information call from Ms. Sjoberg's daughter, Paula Saine. I saw Ms. Sjoberg 2 – 3 days ago and put her back on Zyprexa 5 mg at bedtime. It is already starting to help, as she is less hostile, sleeping better and is more cooperative with her daughter. With her memory problems, she closed out a bank account and opened another one, one day last week, and has already lost her new checks. When I met with her and her daughter this week, I recommended they go see the banker together and make sure that they get a joint account set up, so that her daughter can help her keep from bouncing checks and making double payments to people, as she was doing.

Larry W. Nelson MD LWN/tab 04/25/2011

CPS, P.A.
PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further redisclosure is strictly prohibited.

4/28/11 Mary Beth Sjoberg 8/4/10

Mrs. Sjoberg is seen with her daughter Paula Saine. Per Paula, the Zyprexa has resulted in a marked decrease in hostility. She is sleeping well at night and she has a better appetite. She has chronic diarrhea with at least 2 watery stools per day related to her IBS. The Lomex has worked better than the Xanax for her anxiety. I will continue. These 2 meds. At present, Xanax 0.5 qn - 1/2 HD is working well.

Ms. Sjoberg & Paula did go to the bank and her accounts are straight. They (the bank) still needs a POA so that someone can help w her banking (hopefully Paula). I am encouraging her to allow Paula to become her POA. I don't know, if she will be willing to this or not.

RTT SJOBERG 000306

ROA000701

EXHIBIT 8

Bob Thomas

From: Rita Cullum <rcullum@ellislawhorne.com>
Sent: Friday, May 20, 2011 11:12 AM
To: Bob Thomas
Subject: FW: Sjoberg Documents
Attachments: Certificate of Appointment of Temporary Conservator.PDF; Fiduciary Letter - Temporary Conservator.PDF; Certified Copy - Order Appointing Temporary Conservator.PDF; Certified Copy - Order Appointing Temporary Guardian.PDF; Filed Summons and Petition for Appointment of Guardian.PDF; Filed Summons and Petition for Appointment of Conservator.PDF; Filed Consent to Appointment of Conservator.PDF; Filed Consent to Appointment of Guardian.PDF; Certificate of Appointment of Temporary Guardian.PDF

Bob,

I have attached the following documents:

Certificate of Appointment of Temporary Conservator
Fiduciary Letter as to Temporary Conservator
Certificate of Appointment of Temporary Guardian
Order Appointing Temporary Conservator
Order Appointing Temporary Guardian
Summons and Petition for Finding Incapacity and Appointment of Guardian with attachments
Summons and Petition for Protective Order and Appointment of Conservator with attachments

Please provide me with Mrs. Sjoberg's original Durable Power of Attorney dated June 23, 2007.

Please advise if you are willing to accept service on behalf of your client.

As you can see, you need to reverse the charges on Mrs. Sjoberg's credit card. The charges are in excess of the card limit. We intend to dispute the charges.

Rita

Rita Bragg Cullum
rcullum@ellislawhorne.com | 803.212.4660 direct phone | 803.779.4749 facsimile

ELLIS LAWHORNE
Attorneys at Law

1501 Main Street, 5th Floor, Columbia, South Carolina 29201
803.254.4190 tel | 803.779.4749 fax | www.ellislawhorne.com

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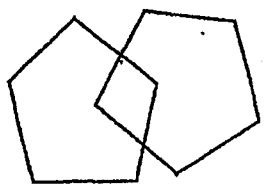
EXHIBIT 9

Mini-Mental State Examination (MMSE)[1,2]*

Make the patient comfortable and establish rapport. Ask questions in the order listed. *Total possible score is 30.*

Mary Beth Sjoberg
7/12/11

Maximum Score	Score	
		ORIENTATION
5	(4)	1. "What is the (year) (season) (date) (day) (month)?" X Aug
5	(5)	2. "Where are we?" (state) (county) (town or city) (hospital) (floor). COPY
		REGISTRATION
3	(3)	Ask the patient if you may test his/her memory. Then say the names of 3 unrelated objects, clearly and slowly, about one second for each (eg, "apple," "table," "penny"). After you have said all 3, ask him/her to repeat them. This first repetition determines the score (0-3), but keep saying them until he/she can repeat all 3, up to 6 trials.
		ATTENTION AND CALCULATION
5	(4)	Ask the patient to begin with 100 and count backwards by 7. Stop after 5 subtractions (93, 86, 79, 72, 65). Score the total number of correct answers. If the patient cannot or will not perform the serial 7s task, ask him/her to spell the word "WORLD" backwards. The score is the number of letters in the correct order (eg, DLROW = 5; DLRW = 4; DLORW, DLW = 3; OW = 2; DRIWO = 1). 100-93-86-79-72-65 DROW
		RECALL
3	(1)	Ask the patient to recall the 3 items repeated above (eg, "apple," "table," "penny").
		LANGUAGE
2	(2)	Naming: Show the patient a wristwatch and ask him/her what it is. Repeat for pencil.
1	(1)	Repetition: Ask the patient to repeat the phrase "No ifs, ands, or buts" after you.
3	(3)	3-Stage Command: Give the patient a piece of blank paper and ask him/her to "take a piece of paper in your right hand, fold it in half, put it on the floor" Score 1 point for each part correctly executed.
1	(1)	Reading: On a blank piece of paper, print the sentence "CLOSE YOUR EYES" in letters large enough for the patient to see clearly. Ask him/her to read it and do what it says. Score 1 point only if he/she actually closes his/her eyes.
1	(1)	Writing: Give the patient a blank piece of paper and ask him/her to write a sentence. Do not dictate a sentence; it is to be written spontaneously. It must contain a subject and verb and be sensible. Correct grammar and punctuation are not necessary.
1	(1)	Copying: Ask the patient to copy the figure of intersecting pentagons exactly as it is. All 10 angles must be present and 2 must intersect to form a 4-sided figure to score 1 point. Tremor and rotation are ignored.



CPS, P.A.

PRIVILEGED AND CONFIDENTIAL
This information has been disclosed to you from records whose confidentiality is protected. Any further redisclosure is strictly prohibited.

Maximum Total Score	Total Score	*Suggested guideline for determining the severity of cognitive impairment:*
30	(25)	Mild: MMSE ≥21
		Moderate: MMSE 10-20
		Severe: MMSE ≤9

Expected decline in MMSE scores in untreated mild to moderate Alzheimer's patient is 2 to 4 points per year.[3,4]

*Adapted from Folstein et al[1] and Cockrell and Folstein[2] © 1975, 1998 Mini Mental LLC. Used with permission.

References: 1. Folstein MF, Folstein SE, McHugh PR. "Mini-Mental State": a practical method for grading the cognitive state of patients for the clinician. *J Psychiatr Res.* 1975;12:189-198. 2. Cockrell JR, Folstein MF. Mini-Mental State Examination (MMSE). *Psychopharm Bull.* 1988;24:689-692. 3. Becker JT, Huff FJ, Nebes RD, Holland A, Boller F. Neuropsychological function in Alzheimer's disease: pattern of impairment and rates of progression. *Arch Neurol.* 1988;45:263-268. 4. Mortimer JA, Ebbit B, Jun S-P, Finch MD. Predictors of cognitive and functional progression in patients with probable Alzheimer's disease. *Neurology.* 1992;42:1689-1696.

EXHIBIT 10

From the desk of
Robert J. Thomas
[Of counsel to the law firm of Rogers, Townsend & Thomas, P.C.]
P.O. Box 100200
Columbia, South Carolina 29202-3200
Telephone (803) 227-2035
Fax (803) 343-7017
Toll-free: 1-866-771-7900, Ext. 3010
e-mail: bthomas@rtt-law.com

August 3, 2012

Annie Bea Hightower, Esquire
Aiken and Hightower
2231 Devine Street, Suite 201
Columbia, SC 29205

Re. Mary Beth Moore Sjoberg
RTT File 13628.1

Dear Bea:

Amy Landers May of this firm has informed me that she received a telephone call from you requesting materials out of our files pertaining to Mary Beth Moore Sjoberg for whom you are serving as GAL. I informed Amy that I would deal with the request since Mary Beth has been my friend for 60 years (since 1952) and has been my client for most of those years.

It concerns me that some of the material requested is of a confidential nature, and the request seems to have originated from Rita Bragg Cullum, Esquire. Rita's client is physically attractive, exceptionally intelligent, assertive, and controlling. Perhaps for these reasons, Rita has allowed herself to be intimidated by her client and pushed to do some things that on her own she would not have done.

I do not perceive anything confidential about the lease Mary Beth had with Labor Ready of the Millwood Avenue property. Therefore, enclosed is the information I have with respect to this property and the lease.

However, with respect to the request for "estate planning documents," I must raise Rule 1.6, SCRPC, as an objection. I cannot imagine anything more confidential that what a client confides to her lawyer in the course of estate

planning.

I am not persuaded by Mary Beth's supposed "consent." Although Mary Beth may be competent to make a new will, it is my hearsay understanding that Judge Belton recently issued a ruling declaring that Mary Beth is incompetent to enter into a *contract*, for which a slightly higher standard of competence is required.

Moreover, because of the stealthful way the action against Mary Beth was commenced, I have always considered jurisdiction dubious. I previously called your attention to the case of *Webster v. Clanton*, 259 S.C. 387, 192 S.E.2d 214 (1972).

Mary Beth executed a healthcare power of attorney that I prepared at her request on January 31, 2010, naming Carolyn Brown as her decision maker. I am enclosing a copy of this document because I can see where it might be needed and is therefore not subject to Rule 1.6.

Bea, none of this is a criticism of you. I respect you, and I recognize that you are simply acting at the request of someone else.

Sincerely yours,

Robert J. Thomas

/s

Copies (letter only) to:

Rita Bragg Cullum, Esquire
PO Box 2285
Columbia, SC 29202

Amy Landers May, Esquire

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.771.7900 F 803.343.7017
W RTT-LAW.COM

Robert P. Wood
Shareholder
Robert.Wood@rtt-law.com
P 803.744.1275
C 803.530.8921
LICENSED IN SC AND US VIRGIN ISLANDS

Sheri H. McClendon
Senior Paralegal to Robert P. Wood
Sheri.McClendon@rtt-law.com
P 803-744-19300

ROGERS TOWNSEND
ATTORNEYS AT LAW

July 27, 2015

The Honorable Jeanette McBride
Clerk of Court for County of Richland
Post Office Box 2766
Columbia, SC 29202-1781

Re: IN RE: Mary Beth Moore Sjoberg
Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Duaghter of Mary Beth Moore Sjoberg v. Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paul Saine
C/A#: 2011-GC-40-00047 and 2011-GC-40-00048
Our file # 910026–03214

Dear Ms. McBride:

On July 20, 2015, we filed our Notice of Intention to Appeal Judge Belton's Order Granting Motion For Sanctions entered on January 2, 2015 (as a result of a hearing held on May 20, 2014), and Order Denying Motion to Reconsider entered on July 13, 2015.

As required by the appeal process, we contacted the Richland County Probate Court and spoke with Mr. Israel Stone to request the transcript from the May 20, 2014 hearing on the Motion for Sanctions. We were advised by Mr. Stone that the Probate Court's recorded transcripts are only maintained for a period of time and that they do not have a copy of any recorded transcripts older than August of 2014.

The Order Denying Motion to Reconsider was entered without a hearing so there would not be a transcript related to entry of that order.

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

Sincerely yours,

Sheri H. McClendon
Senior Paralegal to Robert P. Wood

CC: Art Aiken, Esq.
2231 Devine Street
Columbia, SC 29205

Bea Hightower, Esq.
2231 Devine Street
Columbia, SC 29205

Rita Caughman, Esq.
1301 Gervais Street #1920
Columbia, SC 29201

Michael J. Polk, Esq.
P. O. Box 96
Columbia, SC 29202

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

FILED
2015 JAN 15 PM 4:42
RICHLAND COUNTY, S.C.

ROBERT J. THOMAS AND ROGERS RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

Robert J. Thomas, Esq. and the law firm of Rogers Townsend & Thomas, PC, submit the following Rule 59(e) Motion to Reconsider the Order Granting Motion for Sanctions dated January 2, 2015.

Procedural Background

Petitioner, as attorney-in-fact and daughter, filed a Motion for Sanctions on January 21, 2014 and a submitted a Memorandum in Support on May 19, 2014. Mr. Thomas and Rogers Townsend and Thomas also filed a Memorandum in Opposition to Petitioner's Motion for Sanctions on May 19, 2014 and a Reply to Petitioner's Memorandum in Support of Motion for Sanctions on May 20, 2014. A hearing was held on May 20, 2014. The Court filed its Order Granting Sanctions on January 2, 2015. Mr. Thomas and Rogers Townsend and Thomas received notice of the Order

by email from Ms. Katie Stanley of the Richland County Probate Court on January 5, 2015. (Attached hereto as **Exhibit A**).

In support of this Motion, the Mr. Thomas and Rogers Townsend and Thomas contend there was error committed because the following facts were not considered or addressed by the Court:

1. The Court overlooked that fact that there are no facts in the record to support an "emergency appointment" of the Temporary Conservator and Temporary Guardian.

2. There are no facts in the record indicating that the Personal Representative brought this action and Petitioner did not have standing to file the Motion for Sanctions in any other capacity.

3. The Court overlooked that fact that both the guardianship and conservatorship actions were filed by Ms. Saine as attorney-in-fact.

4. The Court overlooked that fact that Ms. Saine accepted personal service of the guardianship and conservatorship actions on Ms. Sjoberg's behalf.

5. The Court overlooked that fact that the Petitioner never served process on Mary Beth Sjoberg in either the guardianship or conservatorship actions.

6. The Court overlooked that fact that Robert J. Thomas was the Attorney-in-Fact for Mary Beth Sjoberg and, as such, was entitled to priority appointment under S.C. Code Ann. § 62-5-311.

7. The Court overlooked that fact that Ms. Sjoberg revoked Ms. Saine's appointment as her Attorney-in-Fact, so the Court erred in appointing Ms. Saine to serve as the Temporary Guardian.

8. The Court overlooked that fact that no hearing was held within 30 days after the date of the appointment, May 12, 2011, of a Temporary Guardian and Temporary Conservator, as mandated by S.C. Code Ann. § 63-5-310(D).

9. The Court overlooked that fact that the Proof and Delivery filed by Ms. Caughman did not relate to notice of the initial Guardianship or Conservatorship hearing.

10. Because the Court found as a matter of fact and law that Ms. Sjoberg was incapacitated at all relevant times, the Court erred in concluding that any actions of Mr. Johnson (such as waiving personal service) could be binding on Ms. Sjoberg.

11. The Court overlooked the fact that Petitioner never raised the issue that Mr. Thomas and his firm's non-party appeal was interlocutory and that the appeal was not dismissed or delayed on that ground.

12. The Court overlooked the fact that Mr. Polk was not appointed by the Court to examine personal jurisdiction issues or to investigate procedural defects.

13. The Court misapprehended the fact that Petitioner received notice of the circuit court's order dismissing the appeal as moot by email from Judge Benjamin's law clerk on January 10, 2014.

14. The Court overlooked the fact that Mr. Thomas and his law firm submitted their first and second memoranda in support of their Motion to Reconsider the Order for Release of Client Documents at the request of the Court, so the Court erred in sanctioning Mr. Thomas and his law firm for doing exactly what the Court asked them to do.

15. The Court overlooked the fact that both the Order for Release of Client Documents and the Amended Order for Release of Client Documents carved out an exception for any attorney-client-privileged documents and any work product. Because the will and other estate planning documents were protected by the attorney-client privilege and the work produce doctrine, Mr. Thomas and his firm did not violate the order.

16. The Court overlooked the fact that Mr. Thomas and his firm did not have access to the Court's file before they filed their motion to reconsider and their Memorandum in Support.

17. The Court overlooked the fact that there is nothing in the record to indicate that the Conservator requested Ms. Sjoberg's estate documents for a valid purpose or that there was a time sensitive reason to obtain the documents.

18. The Court failed to apprehend that the law regarding the privileged nature of a living person's estate planning documents and will is complex and undeveloped.

19. The Court failed to apprehend that there was no evidence that Mr. Thomas or his law firm was motivated by any improper purpose or that they stood to gain nothing by challenging the Court's orders.

20. The Court overlooked the Affidavit of Robert P. Wood, in which Mr. Wood certifies that challenging the orders, as required by the Rules of Professional Responsibility, cost Rogers Townsend & Thomas thousands of dollars in attorney time, for no benefit to the firm or to Mr. Thomas.

21. The Court failed to apprehend that Mr. Thomas and his law firm reasonably believed there was a sufficient basis in fact and law to challenge the Court's orders.

22. The Court overlooked the Affidavit of D. Cravens Ravenel in which he opined that the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend and Thomas were made in accordance with the law were not frivolous.

23. The Court overlooked the Affidavit of Robert J. Thomas filed on May 16, 2014 in which he certifies that he has never been sanctioned by a Court, including sanctions under Rule 11 or under the South Carolina Frivolous Civil Proceedings Sanctions Act.

24. The Court overlooked the signature of Warren Powell on his Memorandum in Opposition to Motion for Sanctions, which affirms that there were good grounds to support his memorandum.

25. The Court failed to apprehend that it entered the Order for Release of Client Documents and Amended Order for Release of Client Documents sua sponte and without motion by any party, so the Court erred in concluding that Ms. Saine (who did not file a motion seeking the Will or estate planning documents) was the "prevailing party" as contemplated by the South Carolina Frivolous Civil Proceedings Sanctions Act.

Second, Mr. Thomas and Rogers Townsend & Thomas contend there was error committed because the following legal arguments were not considered by the Court:

26. The Court failed to consider that Petitioner's failure to personally serve Ms. Sjoberg with the summonses and petitions amounted to a violation of Due Process. Thus, the Court never had jurisdiction over Ms. Sjoberg and all of the Court's proceedings were without legal authority.

27. The Court failed to consider that Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct requires an inquiry into the Court's file to determine if the Court's order is authorized by law.

28. Although the Court recited that Ms. Sjoberg instructed Ms. Hightower and Mr. Johnson to cease opposing motions, the Court never explained how one without contractual capacity can do such a thing.

29. The Court failed to consider that it is the law of the case that Mr. Johnson's purported representation of Ms. Sjoberg was void; therefore, Mr. Johnson could not waive personal service.

30. The Court overlooked its own finding that Ms. Sjoberg could not have retained Mr. Johnson; so the logical conclusion is that nothing Ms. Johnson did could have been binding on Ms. Sjoberg, including waiver of personal jurisdiction.

31. The Court failed to explain why Mr. Thomas and his firm's arguments are frivolous. The Court only explained why it disagrees with the merits of the arguments.

32. Multiple Memoranda filed by Mr. Thomas and his firm, which the Court now finds were frivolous, were actually requested by the Probate Court. It is contrary to reason that the Court would request counsel to submit memoranda taking a position on issues that the judge would find frivolous and later conclude that no reasonable lawyer would submit such memoranda. A memorandum requested by the Court cannot not be frivolous as a matter of law.

33. The Court failed to make a determination that the estate planning documents and Will of a living person are protected by the attorney-client privilege and work-product privilege.

34. In making its finding that Mr. Thomas and his firm acted unreasonably, the Court failed to consider additional factors as mandated by the act, including, the complexity of the issues and the gap in the law concerning the issues at hand and whether Respondents previously violated the Act.

35. The Court failed to consider that attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading.

36. The Court failed to consider that the Notice of Appeal and Grounds for Appeal are not subject to sanctions under the Act or Rule 11.

37. The Court failed to consider that appeals from the Probate Court to the Circuit Court are governed by the Probate Code, which does not provide for sanctions related to appeals. Therefore, the Notice and Grounds for Appeal cannot be a basis for awarding sanctions.

Third, Mr. Thomas and his firm contend there was error committed because the following findings were contrary to law:

38. The Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the Guardian and Conservatorship matters. The Court did not have personal jurisdiction over Ms. Sjoberg because she was never personally served with the summons and petition in either matter.

39. It was error for the Court to rely on any discussions between Mr. Johnson and Mr. Thomas, as the same were not material to defective personal service.

40. The Court erred in finding that Petitioner's Motion was timely and that she had ten days from the date of notice of the Circuit Court's order dismissing the appeal to file her Motion. Instead, Petitioner had ten days from the date Petitioner was on notice of the Order Denying Mr. Thomas and Rogers Townsend and Thomas' Motion to Reconsider, which was filed on December 4, 2012.

41. The Court erred in finding that the appeal tolled the time for filing Petitioner's Rule 59 motion for sanctions.

42. The Court erred in concluding that Mr. Thomas and Rogers Townsend and Thomas' non-party appeal was interlocutory.

43. The Court erred in finding that Mr. Thomas and Rogers Townsend and Thomas' appeal stayed the Court's ability to make permanent appointments or otherwise proceed in the administration of the matter.

44. The Court erred in finding that Petitioner received notice of the Circuit Court's order dismissing the appeal as moot on January 11, 2014. There is nothing in the record to support such finding.

45. The Court erred in finding that Ms. Sjoberg impliedly consented to disclosure of her estate planning documents, Will, and estate plan.

Mr. Thomas and Rogers Townsend and Thomas do not waive any arguments previously made in this action and incorporate by reference all previous arguments and memoranda herein.

[signature page to follow]

By signing this Motion to Reconsider, we certify that we have read this motion, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

Respectfully submitted,

Robert P. Wood

Warren C. Powell, BY CAITLIN HEYWARD, WITH EXPRESS AUTHORITY

Warren C. Powell, Jr.

Caitlin C. Heyward

BRUNER, POWELL, WALL & MULLINS, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693

Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Exhibit A

Laura Fetner

From: Laura Fetner
Sent: Wednesday, January 07, 2015 1:31 PM
To: Caitlin Heyward
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Attachments: SProbate-KM15010215570.pdf

Importance: High

Hi Caitlin: Notice was received via email from the PC on Monday, 1/5 ☺

From: Warren Powell
Sent: Monday, January 05, 2015 9:28 AM
To: Laura Fetner
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Importance: High

From: Katie Stanley [mailto:StanleyK@rcgov.us]
Sent: Monday, January 05, 2015 8:57 AM
To: Will Britt; Warren Powell; cravenel@brblegal.com; robert.wood@rtt-law.com; rcaughman@sctlawfirm.com; bea@aikenandhightower.com; art@aikenandhightower.com; paulas@sc.rr.com; JLee@sctlawfirm.com
Cc: Lori Elrod
Subject: FW: PDF copy of the Sjoberg Order Granting Motion for Sanctions
Importance: High

Dear All,

Please find attached an Order Granting Motion for Sanctions in the Matter of Mary Beth Sjoberg- Case Numbers 2011 GC40 00047 and 2011 GC40 00048. As this Order is 22 pages, the Court will not mail hard copies to everyone. Therefore, certified copies will be issued upon request.

Sincerley,

Katie Stanley
Guardianship/Conservatorship Director
Richland County Probate Court
1701 Main Street Ste 207 (29201)
P O Box 192
Columbia, SC 29202
P-803-576-1962
F-803-576-1983

www.rcgov.us/probate

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Rita DeCarlis, with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 15th day of January 2015, I served **Robert J. Thomas and Rogers Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Annie B. Hightower, Esquire
Aiken & Hightower, PA
2231 Devine Street, Suite 201
Columbia, SC 29205

Rita Bragg Cullum, Esquire
Ellis Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202

Pope Johnson, Esquire
Johnson & Barnette, LLP
PO Drawer 11209
Columbia, SC 29211

Michael Polk, Esquire
Belser & Belser, PA
1901 Main Street, Suite 1550
Columbia, SC 29202

Rita D. DeCarlis

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

IN THE PROBATE COURT
Case No. 2011-GC-40-00047

Case No. 2011-GC-40-00048

2015 FEB 27 P 3:41

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S MEMORANDUM IN SUPPORT OF RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

This Court granted Petitioner's Motion for Sanction against Robert Thomas and the law firm of Rogers Townsend & Thomas, PC (collectively "RTT") by Order dated January 2, 2015. RTT received said Order on January 5, 2015 and served and filed a Motion to Reconsider on January 15, 2015. RTT, incorporating its prior Memorandum in Opposition to Petitioner's Motion for Sanctions and exhibits attached and/or filed with the Court in support thereof, and without waiving any points made therein, submits this Memorandum in Support of its Rule 59(e) Motion to Reconsider the Order Granting Motion for Sanctions.

Factual Background

This matter originates from sanctions proceedings initiated against a non-party attorney, with no financial interest in the underlying probate proceedings, who sought to protect privileged

communications between him and his former client from an Order of the Court demanding the release of those communications, where there were more than arguable questions about the validity of the Court's Order.

The Court's Order Granting Sanctions arises out of an Order dated July 31, 2012, directing RTT to release all estate planning documents, not limited to final or most recent versions, of its then living client, Mary Beth Sjoberg, to Ms. Saine.[1] After intense investigation and careful consideration of the issues, RTT ultimately determined that the estate planning documents of a living person are privileged, that RTT had a duty not to disclose those documents, and that RTT had a duty to test and, if appropriate, challenge the authority of the Court to enter the Order.

After Mr. Thomas expressed concern that the estate planning documents were privileged, this Court filed an Amended Order for Release of Client Documents on August 24, 2012. Like the Initial Order, the Amended Order directed RTT to release all estate planning of Ms. Sjoberg, not limited to final or most recent versions, but provided that any documents not previously turned over to Ms. Saine instead be turned over to the Probate Court. Both the Initial Order and Amended Order contained exceptions for disclosure of documents protected by the work product doctrine and attorney-client privilege.

---

[1] The initial Order for Release of Client Documents contained the following language: "That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, *not just final or most recent versions* of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will and Testaments, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or heathcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order." (emphasis added).

On August 30, 2014, RTT filed a Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. This Court then requested that RTT submit a memorandum in support of its Motion, one of the filings upon which this Court later relied as a basis for its Order Granting Motion for Sanctions. Adhering to this Court's request, RTT filed a Memorandum in Support of its Motion to Reconsider on September 17, 2012.

In response to RTT's Memorandum in Support, the Court released many documents from its file to RTT on September 25, 2012. Despite the large number of documents released to RTT, nowhere among them was any evidence that the Court had jurisdiction over Ms. Sjoberg. On October 18, 2012, this Court filed an Order Releasing Documents and Protective Order *nunc pro tunc* to September 25, 2012 and requested RTT file a supplemental brief related to its Motion to Reconsider, yet another filing upon which this Court later adopted as basis for its Order Granting Motion for Sanctions. Per this Court's request, RTT filed its Second Memorandum in Support of its Motion to Reconsider on October 25, 2012. This Court ultimately denied RTT's Motion to Reconsider by Order dated December 4, 2012.

Two days later, on December 6, 2012, RTT filed a Notice of Intent to Appeal this Court's Order; however, Ms. Sjoberg died on January, 6, 2014 and before the Circuit Court could rule on the issue. RTT immediately filed Ms. Sjoberg's Will upon learning of her death (as required by S.C. Code Ann. § 62-2-901). RTT's appeal therefore became moot and was dismissed by the Circuit Court on January 10, 2014. This Court then granted Petitioner's Motion for Sanctions against RTT for declining to produce Ms. Sjoberg's estate planning documents before her death.

Argument

I. Petitioner lacked standing to file the Motion for Sanctions.

As a threshold matter, this Court improperly granted Petitioner's Motion for Sanctions because Petitioner lacked standing to seek sanctions against RTT. This Court overlooked the fact that Ms. Saine filed the Motion in her capacity as daughter and attorney-in-fact of Mary Beth Sjoberg after Ms. Sjoberg died. There are no facts in the record indicating that the Personal Representative initiated the present proceedings, and Petitioner did not have standing to file the Motion for Sanctions in any other capacity.

Rule 17 of the South Carolina Rules of Civil Procedure provides "[e]very action shall be prosecuted in the name of the real party in interest." Rule 17 goes on to provide procedures for amending pleadings to name the proper party. The purpose of requiring the real party in interest to prosecute an action is to assure that a defendant is required only to defend an action brought by a proper party and that such an action need be defended only once. Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 169 (1997).

Petitioner is not a real party in interest to these proceedings. Ms. Sjoberg died on January 6, 2014. On January 9, 2014, Ms. Saine was appointed Personal Representative of Ms. Sjoberg's estate. Nevertheless, on January 23, 2014, Ms. Saine filed her Motion for Sanctions in her capacity as attorney-in-fact. However, pursuant to S.C. Code Ann. § 62-5-306 and § 62-5-430, Ms. Saine's authority to act as Temporary Conservator and Temporary Guardian terminated upon Ms. Sjoberg's death. Thus, Ms. Saine did not have standing as attorney-in-fact prior to filing the Motion, a fact this Court acknowledged in its Order Granting Motion for Sanctions. (Order Granting Motion for Sanctions, p. 10).

Furthermore, Petitioner's failure bring the Motion by the real party in interest occurred in the face of a clear understanding of who the proper party is. RTT raised the issue of Petitioner's

lack of standing in its Motion and Memorandum in Opposition to Petitioner's Motion for Sanctions, which was filed on May 5, 2014. (RTT's Memorandum in Opposition to Motion for Sanctions, pp. 15-16). Despite being on notice of RTT's objection, Petitioner never attempted to amend her Motion pursuant to Rule 17 or substitute Ms. Saine in her capacity as Personal Representative as the proper party. Thus, Petitioner's interest in pursuing sanctions in her capacity as Personal Representative was not contemplated from the beginning of these proceedings.

While it is true that Ms. Saine was appointed Personal Representative before the Motion was filed, this Court overlooked the fact that the Motion was never filed in her capacity as such. Simply because Ms. Saine could have brought this Motion in an alternative capacity and chose not to does not cure the procedural defect. Rule 82(a) of the South Carolina Rules of Civil Procedure provides "[t]hese rules shall not be construed to extend or limit the jurisdiction of any court of this State." Because standing is required to invoke jurisdiction of the Court, standing is to be determined at the commencement of the suit. Petitioner as attorney-in-fact did not have standing to invoke the Court's jurisdiction at the commencement of the sanctions proceedings, and the Court cannot substitute a real party in interest for another party if no party with standing has invoked its jurisdiction in the first instance.

II. This Court lacked subject matter jurisdiction over the sanctions proceedings because Petitioner's Motion was untimely.

This Court erred in finding that Petitioner's Motion was timely and that she had ten days from the date of notice of the Circuit Court's order dismissing the appeal to file her Motion. Instead, Petitioner had ten days from the date Petitioner was on notice of the Order Denying RTT's Motion to Reconsider, which was filed on December 4, 2012.

Quoting Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138 (2014) as supporting authority, this Court appropriately acknowledged that motions made pursuant to the FCPSA are post-trial motions and that a party has ten days after the filing of a court order to file a motion pursuant to the Act. (Order Granting Motion for Sanctions, pp. 10-11). However, the Court failed to apprehend that the South Carolina Supreme Court has routinely held that the filing of a notice of appeal does not deprive the lower court of jurisdiction to consider a timely post-trial motion. See Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 161 (2014); Hudson v. Hudson, 290 S.C. 215, 215 (1986). "This way, all ancillary matters can be timely heard, and appealed, if necessary, in an efficient and wholesale manner, and not, in a piecemeal fashion." Holmes at 162.

Here, the Court denied RTT's Motion to Reconsider on December 4, 2012, and RTT filed a Notice of Intent to Appeal that decision on December 6, 2012. Pursuant to Holmes, RTT's Notice of Appeal did not toll the time for filing Petitioner's Motion for Sanctions. Petitioner had until December 14, 2012 to file her Motion for Sanctions against RTT. Instead, Petitioner waited until January 23, 2014, over a year later, to file the Motion. Petitioner was on notice of all of the facts that form the basis of her Motion for Sanctions at the time RTT's Motion to Reconsider was denied, and Petitioner's time to file her post-trial motion for sanctions began to run on that date.

In addition, this Court erroneously found that the appeal was interlocutory and that because the appeal stayed the Court's ability to make permanent appointments, Petitioners had until ten days after the appeal was dismissed to file its Motion. That conclusion is contrary to well established law. RTT's appeal was not interlocutory, and whether or not this Court may consider a motion for sanctions has no effect on this Court's power to make permanent

appointments. RTT was never a party to the underlying guardianship and conservator proceedings, and the purpose of the appeal was to determine whether the Court had the legal authority to order the production of privileged documents. The Court also neglected the fact that Petitioner never raised the issue that Mr. Thomas and his firm's non-party appeal was interlocutory and that the appeal was not dismissed or delayed on that ground. RTT could not have waited until receiving notice of a final order on the Petitions for Appointment before appealing this Court's Order denying its Motion to Reconsider. Had RTT done so, RTT's appeal would have been dismissed by the Circuit Court as untimely. Accordingly, the commencement of time for Petitioner to move for sanctions must have been the date of the Order, December 4, 2012.[2]

III. **This Court's finding that it maintained personal jurisdiction over Ms. Sjoberg in the guardianship and conservatorship matters was legal error, and the Court failed to identify any reason why RTT's objection to the Order and Amended Order Requesting Release of Client's File was unreasonable.**

This Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the guardian and conservatorship matters. The Court overlooked the fact that Ms. Saine filed Petitions in the guardianship and conservatorship actions in her capacity as attorney-in-fact, and then purported to accept service on Ms. Sjoberg's behalf in that same capacity. The Durable Power of Attorney

[2] Nevertheless, this Court calculated Petitioner's ten day deadline to file her Motion to Reconsider from the date the Guardian *ad Litem* received notice of the Circuit Court's Order dismissing the appeal. Even assuming for the sake of argument that was proper, Petitioner's Motion was still untimely. This Court erroneously found that the Guardian *ad Litem* did not receive notice until Saturday, January 11, 2014. There are no facts in the record to support this finding, and an email from Judge Benjamin's law clerk will show that Ms. Hightower actually received notice on Friday, January 10, 2014, the same date the Order Dismissing the Appeal was filed. (Attached hereto as **Exhibit A**). Petitioner did not serve her Motion until January 21, 2014, eleven days after the date of notice and one day beyond the ten-day deadline. Therefore, even if this Court rejects the holding in Holmes, sanctions are not appropriate because this Court never obtained subject matter jurisdiction over the proceedings.

on which Ms. Saine relied did not give her the power to accept service of a lawsuit or defend one on behalf of Ms. Sjoberg. The Court did not have personal jurisdiction over Ms. Sjoberg because (1) she was never personally served with the summonses and petitions and (2) she did not waive service in either matter. Additionally, the Court's appointment of Ms. Saine as Temporary Guardian and Temporary Conservator was improper because Ms. Sjoberg was denied Due Process in both proceedings for the same reasons. Therefore, it was not unreasonable for RTT to challenge the legality of the Court's Order requesting Ms. Sjoberg's estate planning documents on that ground.

Nevertheless, even accepting the Court's determination that jurisdiction was proper, the Court failed to consider that RTT had good grounds to object to the Court's Order Requesting Release of Client Documents, which was well founded in existing law. Apparently recognizing this problem, the Court failed to identify a single reason why RTT's actions were unreasonable. Simply because this Court disagreed with the merits of RTT's position regarding personal jurisdiction is not an appropriate basis for awarding sanctions to Petitioner. The facts and law supporting the merits RTT's objection on the grounds of personal jurisdiction are reiterated below.

A. Temporary Guardianship Proceedings

The Court did not have personal jurisdiction over Ms. Sjoberg in the Temporary Guardianship proceedings because: (1) the Court did not make the necessary preliminary emergency findings pursuant to S.C. Code Ann. § 62-5-310 to justify appointment of a Temporary Guardian without notice to Ms. Sjoberg; (2) there was no notice to Ms. Sjoberg or a hearing held within 30 days of Ms. Saine's appointment as required by S.C. Code Ann § 62-5-

310(D); and (3) Ms. Saine's authority as Temporary Guardian expired within six months of her appointment.

S.C. Code Ann. § 62-5-310 provides as follows:

> (A) If the court makes **emergency preliminary findings** that:
> (1) a physician has certified to the court, orally or in writing, that the person is incapacitated;
> (2) no guardian had been appointed previously; and
> (3) the welfare of the person requires immediate action;
> then the court, with or without petition or notice, may appoint a temporary guardian for a specified period **not to exceed six months** in accordance with the priorities set out in Section 62-5-311.

In addition, S.C. Code Ann § 62-5-310(D) provides, "[i]f a temporary guardian is appointed without petition or notice under this section, **a hearing to review the appointment must be held *after petition and notice* and within thirty days after the appointment of the temporary guardian**" (emphasis added).

In the Order Granting Motion for Sanctions, this Court concluded that S.C. Code Ann. § 62-5-310 "does not require service on the alleged incapacitated person prior to appointing a temporary guardian," suggesting the Court had personal jurisdiction over Ms. Sjoberg in the temporary guardianship action regardless of whether Ms. Sjoberg or her attorney was given notice. (Order Granting Motion for Sanction, p.15). However, the Court overlooked the fact that it had not made the requisite preliminary findings of an emergency. The Order Appointing Temporary Guardian simply provided that an emergency appointment was necessary because Ms. Sjoberg was incapacitated and there was "a need to make immediate heath care decisions." (Order Appointing Temporary Guardian, May 12, 2011, p. 1). The only fact to support the Court's finding was that a doctor opined that Ms. Sjoberg was incapacitated, a finding that would

have struck Ms. Sjoberg as unusual because she was living at home at the time and scored 25 out of 30 points on the Mini-Mental State Examination (MMSF).

Regardless, there were no facts in the record to support an emergency to justify the need to appoint a Temporary Guardian without perfecting service upon Ms. Sjoberg. The Court never identified what important medical decision needed to be made immediately, the State had not started any kind of mental commitment proceeding, and there was no true emergency that would likely result in any immediate or substantial harm to Ms. Sjoberg. In fact, Paragraph 6 of the Petition for Appointment of Guardian asks if it is necessary to appoint a Temporary Guardian for the subject until a hearing could be held on the Petition. That box is checked NO, and an Amended Petition was never filed to request otherwise. (Petition attached hereto as **Exhibit B**).

In its Order Granting Motion for Sanctions, this Court references the cover letter attached to the Petitions that requested the matters be treated as emergency proceedings. (Order Granting Motion for Sanctions, pp. 1-2). However, the cover letter amounts to a flagrant *ex parte* communication with the Court, which apparently had a significant influence on this Court as the Court comments on it in its Order. Nevertheless, the cover letter itself is not part of the record and could not properly be considered by the Court. Petitioner was not willing to put the allegation of any threat of suicide in an affidavit, so the cover letter does not qualify as a "showing" of any fact. Therefore, the notice exception pursuant to S.C. Code Ann. § 62-5-310 did not apply, and Ms. Sjoberg was entitled to notice and a hearing before the Court could obtain jurisdiction over her and legally appoint a Temporary Guardian. Not only was there no personal jurisdiction over Ms. Sjoberg, the Court's appointment of Ms. Saine as Temporary Guardian was also improper because Ms. Sjoberg was denied Due Process when Petitioner failed to serve her with the Summons and Petition for Appointment of Guardian.

What's more, the Court also overlooked that fact that while the law may not require immediate notice to an incapacitated person where the requisite emergency findings are made by the Court, the incapacitated person is still entitled notice and a hearing within 30 days of the appointment of a Temporary Guardian. While an *ex parte* hearing was held on May 9, 2011, it is undisputed that neither Ms. Sjoberg nor her attorney was given notice of it.[3] To suggest that Ms. Sjoberg was provided notice of the May 9, 2011 hearing, this Court erroneously relied on the Proof and Delivery Attorney Rita Caughman filed on June 8, 2011, approximately one month after the initial hearing and the Order appointing Ms. Saine Temporary Guardian and Temporary Conservator was filed. The Proof and Delivery to which this Court refers did not and could relate to notice of the initial hearing. One cannot be given notice of a hearing that has already occurred. It also did not relate to any hearing to take place in the future, but rather personal delivery of the Summons and Petition for Incapacity and Appointment of a Guardian. (Proof and Delivery attached hereto as **Exhibit C**).

Even so, the Proof and Delivery was ineffective because it was served upon Mr. Thomas, who was not Ms. Sjoberg's counsel of record for the purposes of these proceedings. Therefore, because no such notice or hearing to review the appointment of the Temporary Guardian was given as required by S.C. Code Ann. § 62-5-310(D), Ms. Sjoberg was denied Due Process, and the appointment of Ms. Saine as Temporary Guardian was invalid after June 12, 2011.

[3] The Order Appointing Temporary Guardian dated May 16, 2011 also provided that a status hearing be scheduled for no more than forty (40) days from the date of the Order, but did not provide that Ms. Sjoberg would be entitled to any notice, and there is no evidence that such any hearing was held.

Finally, S.C. Code Ann. § 62-5-310(A)(3) limits the time a person appointed Temporary Guardian may serve to six months.[4] Therefore, even assuming the requisite emergency findings were made by the Court, and Ms. Saine's appointment was proper, and Ms. Sjoberg was provided notice and a hearing within 30 days, Ms. Saine's authority as Temporary Guardian expired on November 12, 2011. At the latest, this Court no longer maintained jurisdiction over Ms. Sjoberg after that date because no Permanent Guardian was ever appointed.[5] The first Order for Release of Client Documents was not filed until July 31, 2012, eight months after Ms. Saine's temporary guardianship expired.

B. Temporary Conservatorship Proceedings

This Court erred in finding it had personal jurisdiction over Ms. Sjoberg in the conservatorship matter; the Court did not have personal jurisdiction over Ms. Sjoberg because she was never personally served with the Summons and Petition. It was Ms. Saine who filed the Petition against Ms. Sjoberg and then, amazingly, signed an Acceptance of Service on Ms. Sjoberg's behalf. Ms. Saine's acceptance of service was invalid and without legal effect. The failure to serve Ms. Sjoberg followed by the appointment of a Temporary Conservator over her property deprived Ms. Sjoberg of Due Process.

S.C. Code Ann. § 62-5-405 provides that "[a]fter the filing of the summons and the petition for appointment of a conservator or other protective order, ***the person to be protected***

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[4] The Order Appointing Temporary Guardian also provided the following language: "The appointment of Paula S. Saine as the Temporary Guardian for Mary Beth Moore Sjoberg shall not exceed a period of six (6) months, and shall automatically terminate upon the appointment of a Permanent Guardian."

[5] On November 15, 2011, the Court filed an Order Extending Appointment of Temporary Guardian *nuc pro tunc* to November 11, 2011, which extended the Ms. Saine's appointment as Temporary Guardian 30 days. Even despite no statute authorizing this Court to extend a temporary guardianship, Ms. Saine's authority as Temporary Guardian expired on February 11, 2012, four months prior to the first Order for Release of Client Documents. Ms. Saine's appointment was never extended again and a permanent appointment was never made.

must be personally served with the summons and petition." (emphasis added). Only after service is perfected does the Court retain jurisdiction over the conservatorship proceedings. S.C. Code Ann. § 62-5-402. Furthermore, no statute or rule allows substitute service on an attorney-in-fact. See Rule 4(d)(2) of the South Carolina Rules of Civil Procedure, which requires personal service be made by delivery a copy of the Summons and Complaint to an incompetent person personally.

The Durable Power of Attorney that Ms. Saine purported to use to accept service did not give Ms. Saine the power to accept service of a lawsuit or to defend one. Therefore, Ms. Saine's acceptance of service was invalid absent a valid waiver (which there was none for reasons later discussed) by Ms. Sjoberg.

Likewise, the Proof and Delivery Ms. Caughman filed on June 8, 2011 relating the Summons and Petition for Protective Order and Appointment of Conservator was also ineffective to perfect service upon Ms. Sjoberg. (Proof and Delivery attached hereto as **Exhibit D**). That Proof and Delivery indicates that personal delivery was made upon RTT, but not Ms. Sjoberg. RTT did not represent Ms. Sjoberg for purposes of the conservatorship proceedings, and the South Carolina Rules of Civil Procedure requires personal service on the incapacitated person individually anyway. Moreover, by the time the Summons and Petition was delivered to RTT, this Court already appointed Ms. Saine as Temporary Conservator almost a month prior and held a hearing in Ms. Sjoberg's absence regarding the same. At no time did Petitioner attempt to personally serve Ms. Sjoberg. As such, this Court did not have jurisdiction over Ms. Sjoberg in connection with the conservatorship proceedings when Ms. Saine was appointed Temporary Conservator or any time thereafter.

C. Ms. Sjoberg did not waive service or notice of either the guardianship or conservatorship proceedings.

This Court apparently concluded that Ms. Sjoberg waived her right to personal service for the following reasons: (1) RTT should have affirmatively told Attorney Rita Caughman that the firm could not accept service of process on behalf of Ms. Sjoberg; (2) Mr. Thomas chose not to suggest to Attorney Pope Johnson that he should challenge the issue of personal jurisdiction in a responsive pleading or under Rule 12; (3) Attorney Pope Johnson did not challenge personal jurisdiction on Ms. Sjoberg's behalf; and (4) Attorney Michael Polk and Attorney Bea Hightower did not challenge personal jurisdiction because they concluded it would not be in Ms. Sjoberg's best interest to begin the proceedings again. Notably, the Order omits the fact that Ms. Sjoberg was never personally served.

Waiver of notice of a hearing by the person to be protected is not effective unless she attends the hearing or unless her attorney gives notice of the waiver. S.C. Code Ann. § 62-5-405(b).

As a threshold matter, Mr. Thomas did not have a duty to tell Ms. Caughman anything. Rather, it was Ms. Caughman's duty to serve Ms. Sjoberg properly, and these proceedings initiated by her own client are a direct result of Ms. Caughman's failure to do so. It was also error for the Court to rely on any discussions between Mr. Johnson and Mr. Thomas, as the same were not material to defective personal service. This Court specifically held that Mr. Thomas was not Ms. Sjoberg's counsel of record or an interested party to this matter. (Order Releasing Documents and Protective Order, October 18, 2012, p. 1, FN 1). Mr. Thomas only represented Ms. Sjoberg for the purpose of executing her Will. Because Mr. Thomas was not Ms. Sjoberg's lawyer, Mr. Thomas did not owe any duty to Ms. Sjoberg to point out any procedural defects to

Mr. Johnson and suggest to him how to defend this case. The fact that Mr. Johnson's fee statement submitted to the Court[6] suggested that Mr. Thomas was actively involved in the case or that Mr. Thomas referred Ms. Sjoberg to Mr. Johnson is immaterial to the fact that Mr. Thomas owed no duty to advise Mr. Johnson. To the extent the Court relied on these facts in determining whether or not the Court maintained personal jurisdiction over Ms. Sjoberg, the Court was in error.

Next, the Court overlooked its own finding that Ms. Sjoberg, allegedly, did not have the capacity to retain Mr. Johnson. So the logical conclusion is that nothing Ms. Johnson did could have been binding on Ms. Sjoberg, including waiver of personal jurisdiction. The Court found as a matter of fact and law that Ms. Sjoberg was incapacitated at all relevant times, and it is the law of the case that Mr. Johnson's purported representation of Ms. Sjoberg was "void"; therefore, Mr. Johnson could not waive personal service as a matter of law. Even if Mr. Johnson had raised the procedural issues in his Answer, which was ultimately stricken, or as otherwise provided in Rule 12, those objections would have also been void and stricken by the Court. Neither Mr. Thomas nor Mr. Johnson could waive the defense of lack of personal jurisdiction on Ms. Sjoberg's behalf because neither represented her in this matter.

The Court also erred in relying on Mr. Polk and Ms. Hightower's conclusion that it would not be in Ms. Sjoberg's best interest to begin the proceedings again to imply that personal service was waived on Ms. Sjoberg's behalf. Mr. Polk was not appointed by the Court to examine personal jurisdiction issues or to investigate procedural defects, nor would it be logical for the Court to do so. It defies reason that a Court would appoint an attorney on a person's

[6] RTT will also note that Mr. Johnson's fee affidavit was not a part of the record furnished to RTT in response to RTT's Petition for Writ of Mandamus or Certiorari or part of the record that was furnished to Mr. Wood. Therefore, this Court's Order contains findings that are not supported by the record.

behalf to determine whether the Court has jurisdiction over them, when a negative answer would render the appointment itself void. Nevertheless, Mr. Polk's appointment was without effect as the original service of Ms. Sjoberg was inadequate; therefore, Mr. Polk's failure to object to personal jurisdiction could not amount to waiver of proper service that was binding on Ms. Sjoberg. As explained below, to hold otherwise would violate Due Process.

D. The Court's Order was invalid because the temporary guardianship and conservatorship proceedings and appointments violated Due Process.

The Court failed to consider that Petitioner's failure to personally serve Ms. Sjoberg with the summonses and petitions for both the guardianship and conservatorship proceedings amounted to a violation of Due Process.

The essence of procedural due process is that before any decree or order may affect a person's rights as to life, liberty or property, the person whose rights are affected is entitled to notification of a hearing and an opportunity to be heard before an impartial tribunal. Tall Tower, Inc. v. South Carolina Procurement Review Panel, 294 S.C. 225, 233 (1987); Sabella v. South Carolina Alcoholic Beverage Control Comm'n, 289 S.C. 400, 402, (Ct. App. 1986); State v. Brown, 178 S.C. 294, 182 S. E. 838 (S.C. 1935), appeal dismissed, 298 U.S. 639 (1936); see also Joy v. Daniels, 479 F. 2d 1236 (4th Cir. 1973).

In Webster v. Clanton, 259 S.C 387, 391 (1972), the South Carolina Supreme Court declared void for lack of jurisdiction any order affecting a defendant's substantial right where the defendant was not given notice and an opportunity to defend himself. There, the Court held:

> The order of April 22, not appealed from, was clearly void, and of no effect whatsoever and no appeal therefrom was necessary to protect the rights of the father. ... It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be

> heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. ...

Webster v. Clanton, 259 S. 387, 391, 192 SE2d 214, 216 (1972).

Likewise, Due Process is not accorded to a party simply because a representative of that party who is not of the party's own choosing speaks on the party's behalf. Sabella v. South Carolina Alcoholic Beverage Control Comm'n, 289 S. C. 400, 402, (Ct. App. 1986); In re Nash, 799 So.2d 1271 (2001). In Sabella, an attorney for the Alcoholic Beverage Control Commission argued on behalf of parties to whom notice of a hearing was not given. The court held that these parties did not receive the required notice "and [therefore] were denied their [own] day in court." Id.

Similarly, the Third Circuit Court of Appeals held a court-appointed attorney could not accept service or act on behalf of a party to a proceeding where service of process was not tendered to the party herself. In re Nash, 799 So.2d 1271, 1273 (2001). There, a curator was appointed by the trial court to take care of respondent's interests. Id. at 1271. A judgment of interdiction was entered by the court, stripping the Respondent of her legal rights. Id. The petitioner never perfected service upon the respondent. Id. The court ultimately held that because service was not personal as to the respondent herself, the appointment of the curator was premature and without effect, and the curator's failure to object to the sufficiency of service of process did not result in a waiver. Id. at 1273. This is because the law "envisions an initial service of process on the defendant and an opportunity for her to retain counsel of her choice and to answer the petition." Id.

In regards to the guardianship proceedings, even assuming S.C. Code Ann. § 62-5-310 did not require personal service on Ms. Sjoberg, the law itself, at least as applied here, violates the fundamental principals of Due Process. Ms. Sjoberg was also denied Due Process when she

was not provided notice and hearing to review the appointment of the Temporary Guardian within 30 days. As to both the guardianship and conservatorship matters, pursuant to In re Nash, no action by Mr. Polk cured the procedural defect or could be binding on Ms. Sjoberg such that this Court properly obtained jurisdiction over the proceedings. Thus, the Court never had jurisdiction over Ms. Sjoberg, and all of the Court's proceedings concerning Ms. Sjoberg were without legal authority.

IV. Because the Will and other estate planning documents were protected by the attorney-client privilege and the work product doctrine, Mr. Thomas and his firm did not violate the Order and Amended Order for Release of Client Documents.

Because Ms. Sjoberg's Will and other estate planning documents were protected by the attorney-client privilege and the work product doctrine, RTT did not violate any order of this Court; therefore, sanctions were inappropriately granted.

Here, the Court failed to make a determination that the estate planning documents and will of a living person are protected by the attorney-client privilege and work product doctrine. Instead, the Court highlighted SCRPC 1.6 regarding confidentiality and found RTT had informed consent from Ms. Sjoberg to share the documents with Ms. Saine. (Order Granting Motion for Sanctions, p. 13, January 2, 2015). This finding was based on the following: (1) Mr. Thomas provided a copy of Ms. Sjoberg's executed Will dated November 12, 2010 to Ms. Saine in January of 2011; (2) it was the same Will in effect at the time of Ms. Sjoberg's death; (3) Ms. Sjoberg never executed a subsequent Will; and (4) there was "no evidence [Ms. Sjoberg] had ever withdrawn the informed consent she had previously given." Id. This Court concluded that "[a]t the very least, Robert Thomas and RTT should have notified Ms. Saine that she was already in possession of a copy of Ms. Sjoberg's most recent Will or the firm should have turned over the documents as requested by Ms. Saine and ordered by this Court." Id.

A person's estate plan is highly personal and confidential. The fact Ms. Saine was privy to a copy of a Ms. Sjoberg's executed Will and prior drafts of the Will, and that she met with Mr. Thomas to discuss the Will in the past did not entitle Ms. Saine to know whether or not Ms. Sjoberg later decided to make changes to her estate plan or not. Nor did it amount to informed consent. ***It was the very fact that Ms. Sjoberg did not change her Will that was the confidential information protected by the attorney-client privilege.*** This can be emphasized by this Court's own finding that while Ms. Sjoberg did not have the capacity to contract with Pope Johnson, she did have the capacity to make a new Will or codicil. (Order Granting Motion for Sanction, p. 3). Providing a copy of the executed Will and informing Ms. Saine that she was already in possession of Ms. Sjoberg's most recent Will would have been a breach of the privilege. Therefore, RTT was exercising its legal and ethical obligations by challenging the Court's Order requiring the release of Ms. Sjoberg's estate planning documents.

In support of the notion that RTT should have produced the requested documents to Ms. Saine or to the Court, the Court noted that the law requires a conservator and the court to take into account any known estate plan of the protected person. However, the Probate Code requires a conservator to take into account the estate plan of an incapacitated person for the purpose of making gifts in accordance with the plan, paying taxes, and the like. S.C. Code Ann. § 62-5-427.[7] Here, no such facts exist. Petitioner does not argue and the Court does not find that gifts needed to be made, taxes paid, or any such reason requiring Ms. Sjoberg's Will.

[7] "In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of Section 62-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated." S.C. Code Ann. § 62-5-427.

While Rule 1.6 provides that the attorney's duty of confidentially may be overridden by court order, the Rule simply *permits* an attorney to make the disclosure, but does not *require* it. Should an attorney decide to make a disclosure of confidential and privileged information pursuant to a court order, Rule 1.6 provides it should be made in a manner that limits access of the information to the person or tribunal having a need to know. However, it was within Mr. Thomas' discretion to decide not to do so. But moreover, it was his duty to ascertain whether the orders requiring production are lawful, valid orders.

The court in In re Guardianship of York, 44 Wn. App. 547, 552 (Wash. Ct. App. 1986), addressed this very issue. There, the Washington Court of Appeals reversed the trial court's order requiring the ward's attorney to produce a copy of the will to the guardian. Id. The court based its holding in part on the attorney-client privilege. The court held that an attorney may not disclose his living client's will prior to their death. The court concluded that even though the Washington Rules of Professional Conduct allow an attorney to disclose privileged information pursuant to a court order, "such compulsion must be used sparingly." Id.

Finally, RTT did comply with the Court's order to the extent it did not require them to disclose privileged information. The Initial Order and Amended Order carved out an exception for any privileged documents. Both Orders contained a broad demand for all estate planning documents, including any unexecuted documents. RTT promptly handed over the non-privileged documents relating to the rental properties. As to the remainder of the documents requested, RTT determined those stemmed from a good faith and reasonable assertion of privilege. Because the order provided an exception for privileged information, RTT could not have violated any of the terms of the Order.

V. **Sanctions against RTT are inappropriate because this Court misapplied the standard for sanctions under Rule 11 and the Act, failed to consider additional factors as mandated by the Act, failed to apprehend that RTT did not continue to demand the Probate Court's file after the file was already in hand, and failed to identify any reason why continuing to object to the Order after RTT received the Court's file was unreasonable.**

The filings this Court identified as frivolous cannot properly form a basis for sanctions. The filings on which this Court relied are listed as follows:

- 8/30/12- RRT's Motion to Reconsider Pending Review of Court's File
- 9/17/12- RTT's Summons and Petition for Writ of Mandamus or Certiorari requesting release of the Probate Court's file
- 9/17/12- RTT's Memo in Support of Motion to Reconsider and Claim of Privilege Pending Review of the Court's File
- 10/25/12- RTT's Second Memorandum in Support of Motion to Reconsider its Motion to Reconsider the Court's Order and Amended Order for Release of Client Documents
- 12/11/12- RTT's Return to Motion to Dismiss informing the Circuit Court that RTT's 9/17/12 Petition was moot due to this Court releasing the requested documents
- 1/17/13- RTT's Grounds for Appeal relating to this Court's denial of RTT's motions to reconsider the Order and Amended Order for Release of Client Documents

This Court found the above filings were unreasonable for two reasons: (1) it was frivolous for RTT "to continue to pursue the matter of demanding that they receive the Guardianship and Conservatorship files, even after they already had the files in hand"; and (2) once RTT had the Guardianship and Conservatorship files in hand, it was frivolous for RTT "to continue to pursue the issue of contesting the original Order and Amended Order issued by this Court directing the firm to release Mary Beth Sjoberg's client records." (Order Granting Motion for Sanctions, p. 20).

This Court misapplied the standard for granting sanctions under Rule 11 and the Act, and the Court failed to consider certain factors as mandated by the Act. Further, none of the above filings were frivolous. RTT did not continue to demand the Court's file after it had the file in

hand, and even after RTT received it, RTT's challenge as to the validity of the Order was not only appropriate, but ethically required.

A. This Court misapplied the standard for awarding sanctions under Rule 11 and the Act.

Because this Court failed to apprehend the correct standard for granting sanctions under Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, Petitioner's Motion for Sanctions against RTT was improperly granted.

The South Carolina Rules of Civil Procedure are based on the Federal Rules, "where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." Gardner v. Newsome Chevrolet-Buick Inc., 304 S.C. 328, 330 (1991). Under Federal Rule 11, the phrase "good ground to support" means that there is a requirement of some pre-filing inquiry into both the facts and the law before filing a pleading with the court. The standard is one of reasonableness under the circumstances. See Rule 11, FRCP, notes. The claims or legal contentions asserted by parties must be warranted by existing law or by a non-frivolous argument for a change in existing law.

Furthermore, Rule 11 "is intended only for exceptional circumstances" and, as is the case under the Act, "Rule 11 sanctions awarding counsel fees do not automatically or usually follow an adverse judgment or ruling." Gaiardo v. Ethyl Corp., 835 F.2d 479, 483 (3rd Cir. 1987). Rather, "[s]ubstantially more is required." Id. See also *5A* Wright & Miller, *Federal Practice and Procedure: Civil 2d §* 1335 at 88 (observing that the fact that a claim has been "dismissed for legal insufficiency or does not present a triable issue does not necessarily mean that a sanction is appropriate."). Thus, Court's mere disagreement with the merits of RTT's arguments is insufficient to survive the high standard that must be satisfied before sanctions may be

awarded. Brubaker v. City of Richmond, 943 F.2d 1363, 1377 (4th Cir. 1991) ("Rule 11 does not require that a judge or jury agree with a plaintiff's allegation.").

This Court examined the merits of RTT's privilege and personal jurisdiction arguments in detail, but did not make a determination as to whether RTT acted unreasonably in making the arguments. As an initial matter, the fact that this Court denied RTT's motions to reconsider and RTT's appeal was dismissed as moot does not provide an independent basis to award sanctions under Rule 11 or the Act. The issue of whether the Court had jurisdiction or authority to order the release of confidential information was never ruled on by the Circuit Court. Regardless, simply because this Court, or any court for that matter, disagrees with RTT's legal argument does not make RTT's legal position unreasonable. If that were the case, then every motion that is denied is unreasonable and subject to sanctions. The standard for awarding sanctions under Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act requires a much greater threshold, and the Court never addressed those standards.

Here, after a thorough investigation of the facts and the law, RTT determined that the estate planning documents the Court ordered to be released were protected by the attorney-client privilege and that, in any event, the Probate Court lacked personal jurisdiction as to Ms. Sjoberg. RTT took extraordinary efforts to carefully research the current state of the law directly at issue, but also development of the law, development of comparable law, and secondary materials. RTT carefully and fully briefed the grounds of its argument for the Court. RTT employed the services of an expert to render an opinion and submit an affidavit as to whether or not producing the Will would amount to a violation of the attorney-client privilege. Finally, in its Memorandum in Opposition to Petitioner's Motion for Sanctions, RTT again explained to the Court in detail the

purpose for each motion, memoranda, and the Notice and Grounds for Appeal as well as the history of the dispute that made it reasonable to file them at the time.

While there is no South Carolina case on point, other states have directly addressed this complicated issue, concluding that a court lacks the authority to either (1) generally compel the production of the will of a living testator or (2) order a will be turned over to a guardian or conservator. See e.g. In re Guardianship of York, 44 Wn. App. 547, 552 (Wash. Ct. App. 1986); In Re Conservatorship of Du Nah, 106 Cal. App. 3d 517 (Cal. App. 2d Dist. 1980); Baumann v. Willis, 721 S.W.2d 535 (Tex. App. 1986).

As such, RTT genuinely believed it had a valid claim of privilege under existing law or, at the very least, a valid argument for the extension of existing law. The Court failed to identify any reason, other than disagreement with the merits of RTT's position regarding personal jurisdiction and privilege, to support its finding that RTT acted unreasonably. The appeal to determine the same was ended by Ms. Sjoberg's death. Therefore, RTT's objection to the validity of the Order and Amended Order on the basis of privilege was not frivolous.

B. The Court failed to consider additional factors as mandated by the Act.

In finding that Mr. Thomas and his firm acted unreasonably, this Court failed to consider additional factors as mandated by the Act, including but not limited to, the complexity of the issues and the gap in the law concerning the issues at hand and previous violations of the Act or Rule 11.

The South Carolina Civil Proceedings Sanctions Act sets forth a list of factors the Court must consider in its decision to award sanctions. The Act provides as follows:

> (E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court **shall** take into account:
>
> (1) the number of parties;

(2) the complexity of the claims and defenses;
(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
(5) previous violations of this section;
(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
(7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

S.C. Code Ann. 15-36-10(E)-(F) (emphasis added).

Here, the Court failed to apprehend that the law regarding the confidential and privileged nature of a living person's estate planning documents and will is complex and undeveloped, and the Court failed to appreciate the Affidavit of Robert J. Thomas, filed on May 16, 2014 in which he certifies that he has never been sanctioned by a Court, including sanctions under Rule 11 or under the South Carolina Frivolous Civil Proceedings Sanctions Act, both of which this Court is required to consider. In fact, the legislature placed such great importance on the latter that it is listed as a mandatory consideration two separate times in the Act itself.

Even if the Court disagrees with RTT that disclosure of a prior will amounts to an implied waiver of a person's entire future estate plan, that area of the law is novel, and RTT had good grounds to object on that basis and argue in good faith for a modification or extension of existing law in this unique context. There is no South Carolina case law that directly addresses the privilege of a living person's estate planning documents, much less waiver or the revocation

of waiver of the same, when the Respondent was not personally served with the initiating Summons and Petition. However, existing case law in other states as mentioned previously suggests a strong argument in favor of RTT's challenge of the legality of the Court's Order.

In addition, the Court overlooked the Affidavit of D. Cravens Ravenel, in which he opined that the filings and arguments of Robert J. Thomas and the law firm of Rogers Townsend and Thomas were made in accordance with the law were not frivolous. Likewise, the Court overlooked the signature of Warren Powell on his Memorandum in Opposition to Motion for Sanctions, which affirms that there were good grounds to support each of RTT's filings. Nowhere in the Order Granting the Motion for Sanctions does the Court acknowledge that Mr. Thomas and his law firm reasonably believed there was a sufficient basis in fact and law to challenge the Court's orders. Instead, the Court merely explained the reasons why the Court disagreed with RTT's position on the merits.

C. This Court failed to apprehend the fact that RTT did not continue to demand the guardianship and conservatorship files after they had those files in hand.

This Court failed to apprehend the fact that RTT did not continue to demand the guardianship and conservatorship files after they had those files in hand. As such, RTT's first Motion to Reconsider, Summons and Petition for Writ of Mandamus, and Return to Motion to Dismiss cannot be a proper basis for awarding sanctions on that ground.

The Court neglected the fact that Mr. Thomas and his firm did not have access to the Court's file before they filed their Motion to Reconsider on August 30, 2012 or their Memorandum in Support on September 17, 2012.[8] Likewise, the Summons and Petition for Writ

[8] As noted in RTT's Memorandum in Opposition to Petitioner's Motion for Sanctions, Judge Belton forward Mr. Wood some documents from the Court's files on September 10, 2012, but indicated in a follow up email that RTT should contact her judicial clerk, Mr. Spitz, or the director of the Guardian and Conservatorship Division, Ms. Lewis, if additional documents were

of Mandamus or Certiorari was not frivolous because it was also filed before the Court turned over its file to RTT. (Petition attached hereto as **Exhibit E**). RTT's Petition was proper in light of Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct, which requires an inquiry into the Court's file to determine if the Court's order is authorized by law. RTT filed the Petition on September 19, 2012, and this Court acknowledged that RTT did not receive the Court's file until September 25, 2012. (Order Granting Motion for Sanctions, p.5).

Furthermore, RTT's Return to Motion to Dismiss notifying the Circuit Court that its Petition was moot due to this Court releasing the requested documents was also not frivolous. (Return attached hereto as **Exhibit F**). RTT's Return was the opposite of a demand for the Court's file, as it was effectively a voluntary dismissal of RTT's own Petition. RTT filed the Return only after RTT obtained the requested file. This Court failed to explain how the Return was so improper as to warrant sanctions against RTT. However, it should be noted that Petitioner never sought sanctions on the basis of RTT's Summons and Petition for Writ of Mandamus or Certiorari or RTT's Return to Motion to Dismiss in her Motion or Memorandum in Support of Petitioner's Motion for Sanctions. Petitioner never alleged that RTT acted unreasonably in allegedly continuing to pursue the Court's file after it was already in hand. This ground was never before the Court, but was addressed *sua sponte* in its Order Granting Motion for Sanctions.

---

needed. Mr. Wood did need additional documents and sent several emails to Mr. Spitz and Ms. Lewis requesting those, but Mr. Wood never received them. It was not until the Court released the file on September 25th that Mr. Wood had all of the documents necessary to properly investigate the validity of the Court's Order and Amended Order for Release of Client Documents.

D. RTT did not act unreasonably in continuing to contest the original Order and Amended Order directing RTT to release Ms. Sjoberg's estate planning documents after RTT received the Court's file.

First, RTT's Motion to Reconsider Pending Review of the Court's File, which was filed before receipt of the Court's file, was proper because RTT had a duty to investigate the file to determine the legality of the Court's Order. This was the first formal claim of privilege made by RTT, which RTT had every right to assert. As to RTT's second Motion to Reconsider, which was filed after RTT received the Probate Court's file, RTT's objection was reasonable given the status of the law around the country supporting RTT's position regarding privilege and given the highly complex issue involving what effect lack of proper service and notice has on a Court's authority to compel a non-party to produce privileged documents. This Court also overlooked the fact that both the Order for Release of Client Documents and the Amended Order for Release of Client Documents carved out an exception for any attorney-client privileged documents and any work product. And because the Will and other estate planning documents were protected by the attorney-client privilege and the work produce doctrine, Mr. Thomas and his firm did not violate the Order.

The easier path for RTT, a nonparty, would have been to simply produce the documents. Ms. Sjoberg was unable to represent herself, and it was unlikely anyone would have challenged RTT's breach of the privilege. Furthermore, nobody was paying RTT to assert Ms. Sjoberg's privilege. There was nothing in it for RTT to assert the privilege other than its desire to comply with the Rules of Professional Conduct. And the Court never acknowledges that fact in its Order Granting Motion for Sanctions.

However, being carefully observant of his ethical obligations, Mr. Thomas took an approach that would be undesirable to many lawyers, considering the time and expense to litigate

the issue with little prospect of payment. The decision to challenge an order of the Court was not made for any improper purpose or out of a desire to prolong proceedings. This Court overlooked the fact that Mr. Thomas and RTT were not parties to the probate proceedings and had nothing to gain from withholding Ms. Sjoberg's estate documents. To the contrary, as provided in the Affidavit of Robert P. Wood, Mr. Thomas and his firm have expended a considerable sum of non-billable hours defending that decision at no benefit to the firm. As a matter of public policy, this Court must carefully consider whether a law firm with no stake in the outcome of a case, other than its professional obliagations, should *ever* be sanctioned for questioning a court's right to order the production of privileged information.

Second, a memorandum requested by the Court cannot not be frivolous as a matter of law. Two of the filings, RTT's First and Second Memoranda in Support of its Motion to Reconsider, which this Court now finds frivolous, were filed upon the request of this Court. It is contrary to reason that the Court would request counsel to submit memoranda taking a position on issues that the Court would find frivolous and later conclude that no reasonable lawyer would submit such memoranda. Therefore, this Court erred in sanctioning Mr. Thomas and his law firm for doing exactly what the Court asked them to do. This dynamic puts RTT in the position of waiving its assertion of the privilege by disobeying the Court's instructions to file a memorandum, or, in the alternative, complying with the Court's instructions by asserting the privilege in a memorandum and suffer an order imposing sanctions for doing so.

Finally, the Grounds for Appeal is not subject to sanctions under the Act or Rule 11. This Court failed to consider that appeals from the Probate Court to the Circuit Court are

governed by the Probate Code, which does not provide for sanctions related to appeals.[9] Therefore, the Notice and Grounds for Appeal cannot be a basis for awarding sanctions. This issue was raised in RTT's Motion in Opposition to Motion for Sanctions, yet the Court wholly ignored this argument and failed to even address it in its Order Granting Motion Sanctions. Nevertheless, the Grounds for Appeal was not frivolous because RTT had a good faith argument grounded in existing law that the estate planning documents of a living person are privileged and should not be revealed to a court that does not have authority to order them to be. The Grounds for Appeal were filed before Ms. Sjoberg's death, so the issue was not yet moot.

VI. Attorneys' fees are not appropriate because Petitioner is not a prevailing party.

The Court failed to consider that attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading. S.C. Code Ann. § 15-36-10(G)(1) provides sanctions may include: "an order for the party represented by an

[9] In RTT's Memorandum in Opposition to Motion for Sanctions, RTT explained in detail why the Notice and Grounds for Appeal are not subject to sanctions under Rule 11 or the Act. RTT noted that S.C. Code Ann. § 56-36-10(A)(4) specifically refers to "a civil or administrative action" and the filing of a frivolous pleading, motion or document." The points in time in which the Court should determine if a claim or defense is frivolous are enumerated, including "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by directed verdict, summary judgment, or judgment notwithstanding the verdict..." S.C. Code Ann. § 56-36-10(C)(1). Nowhere in the statute does the Act authorize sanctions in appellate court maters or relating in any way to appeals. Similarly, Rule 11, like all South Carolina Rules of Civil Procedure, is applicable to matters in "the Court of Common Pleas and...all South Carolina courts in suits of a civil nature whether cognizable as cases at law or in equity, subject to certain exceptions contained in Rule 81." Rule 81 provides "the rules shall apply to every trial court of civil jurisdiction within the state and shall apply insofar as practicable in magistrates' courts, probate courts and family courts to the extent they are not inconsistent with the statutes and rules governing those courts." Conversely, the SC Appellate rules specify the procedures for appeals, petitions and motions before the Supreme Court and the Court of Appeals. They also contain rules governing conduct, discipline, etc. Rule 74 SCRCP makes clear that the appeals from inferior courts or administrative agencies are governed by statutes providing for such appeals. Appeals from the probate court to the circuit court are governed by the probate code, which does not provide sanctions related to appeals. S.C. Code Ann. § 62-1-308.

attorney or pro se litigant to pay the reasonable costs and attorney's fees of the *prevailing party* under a motion pursuant to this section." (emphasis added).

Here, the Court entered the Order for Release of Client Documents and Amended Order for Release of Client Documents *sua sponte* and without motion by any party, so the Court erred in concluding that Ms. Saine (who did not file a motion seeking the Will or estate planning documents) was the "prevailing party" as contemplated by the South Carolina Frivolous Civil Proceedings Sanctions Act.

Moreover, even if Petitioner made a motion requesting the release of the documents, the issue was never ruled upon by the Circuit Court because Ms. Sjoberg died, rendering the appeal moot. The Will did not arrive at the Court by virtue of any order of the Probate Court, but instead by virtue of S.C. Code Ann. § 62-2-901. Because there was no adverse ruling, Petitioner cannot be a prevailing party in this instance.

In regards to any award of attorneys' fees, any fees should be examined in light of whoever is responsible for prosecuting the case by initiating it without having obtained personal jurisdiction. Therefore, RTT respectfully requests this Court reconsider Petitioner's request for attorneys' fees.

Conclusion

Wherefore, RTT respectfully requests the Court reconsider its Order Granting Motion for Sanctions dated January 2, 2015. The undersigned affirms, pursuant to SCRCP 11(a), that consultation with opposing counsel is not required.

By signing this Memorandum in Support of RTT's Rule 59(e) Motion to Reconsider, we certify that we have read this motion, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

Respectfully submitted,

Robert P. Wood

Warren C. Powell BY CAITLIN C. HEYWARD WITH AUTHORITY

Warren C. Powell, Jr.

Caitlin C. Heyward

Caitlin C. Heyward

BRUNER, POWELL, WALL & MULLINS, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693

Attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC

Columbia, SC

February 27, 2015

EXHIBIT A

Caitlin Heyward

From: Benjamin, DeAndrea G. Law Clerk (Ashley Wheeling-Goodson) [dbenjaminlc@sccourts.org]
Sent: Friday, January 10, 2014 12:15 PM
To: alicia@aikenandhightower.com; rcaughman@sct.lawfirm.com; Robert P. Wood; mike@belserpa.com
Cc: parkerg@rcgov.us
Subject: Mary Beth Moore Sjoberg -Form 4
Attachments: Sjoberg Filed Form 4.pdf

Good afternoon,

I hope this correspondence finds you all well. A Form 4 has been filed in this case, and it has been attached to the body of this e-mail for your convenience.

Thanks,

Ashley Wheeling-Goodson
Law Clerk for The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP408088

Rogers Townsend & Thomas, PC

APPELLANT

Paula Saine, As the Attorney-In-Fact For Mary Beth Moore Sjoberg and as the Daughter of Mary Beth Moore Sjoberg and A. Bea Hightower, As Guardian ad Litem for Mary Beth Sjoberg

RESPONDENT

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other _____ ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award

☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: This appeal is dismissed because the appeal is moot.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

CLERK OF COURT
RICHLAND COUNTY
FILED
2014 JAN 10 PM 1 38

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2161 Date 1-10-14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Robert Wood
ATTORNEY(S) FOR THE APPELLANT

A. Bea Hightower, Rita Bragg Caughman, and Michael Polk
ATTORNEY(S) FOR THE RESPONDENT(S)

Court Reporter Debbie McCurdy

Clerk of Court _____

SCRCP Form 4C (10/2011)

EXHIBIT B

COPY

FILED

11 APR 22 PM 3:56

ANITA B. BLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

IN THE MATTER OF)

MARY BETH MOORE SJOBERG)

SUMMONS

PAULA S. SAINE,)
AS THE ATTORNEY-IN-FACT FOR)
MARY BETH MOORE SJOBERG,)
PRINCIPAL,)
AND AS THE DAUGHTER OF)
MARY BETH MOORE SJOBERG,)

2011 GC40 00048

PETITIONER,

v.

MARY BETH MOORE SJOBERG,)
~~AND/OR HER GUARDIAN AD LITEM,~~)
AND PAULA S. SAINE)

RESPONDENTS.)

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Petition upon the subscriber, at her office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

April 22, 2011
Columbia, South Carolina

Rita Bragg Cullum, Esquire
Attorney for Petitioner
Ellis, Lawhorne & Sims, PA
Post Office Box 2285
Columbia, South Carolina 29202
(803) 254-4190

RTT SJOBERG 000188

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF RICHLAND)

THE MATTER OF)
MARY BETH MOORE SJOBERG)

FILED
11 APR 22 PM 3:56
PROBATE JUDGE
RICHLAND COUNTY, S.C.

PETITION FOR FINDING

CASE NUMBER: 2011 GC40 000548

☒ INCAPACITY
☒ APPOINTMENT OF
☒ GUARDIAN
☐ SUCCESSOR GUARDIAN

Applicant/Petitioner: Paula S. Salne
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone: 803-261-4566

I. ALL PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned: Attorney in fact and daughter of the Allegedly Incapacitated Person

2. Information -- Allegedly Incapacitated Person

Name: Mary Beth Moore Sjoberg Age: 81
Date of Birth 09/23/1929
Address: 3825 Linwood Road
City/State/Zip: Columbia, SC 29205
Telephone: 803-782-4766

To my knowledge, above named ☒ *DOES* ☐ *DOES NOT* have a health care power of attorney (See attached as Exhibit "A").
To my knowledge, above named ☐ *DOES* ☒ *DOES NOT* have a living will (Declaration of a Desire for a Natural Death.)

3. Venue for this proceeding in this county because the subject:

☒ resides in this county.
☐ is present in this county.
☐ is admitted to an institution pursuant to an order of a court of competent jurisdiction in this county.

4. Information—Family of allegedly incapacitated person, including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Incapacitated Person
Paula S. Salne	21+	3105 Grace Hill Road Columbia, SC 29204	Daughter
Karl Lennart Sjoberg (deceased)			Son
Kalyn Marie Sjoberg (child #1 of Karl Lennart Sjoberg)	09/08/1993	4800 Reamer Ave Columbia, SC 29206	Grandchild
Ashton Kristina Sjoberg (child #2 of Karl Lennart Sjoberg)	04/16/1998	4800 Reamer Ave Columbia, SC 29206	Grandchild
Lennsey Beth Sjoberg (child #3 of Karl Lennart Sjoberg)	06/28/2002	4800 Reamer Ave Columbia, SC 29206	Grandchild

(use additional sheet if necessary)

5. The nature and degree of incapacity is as follows:

Memory impairment; Alzheimer's dementia; physical limitations; loss of ability to live independently

II. COMPLETE THIS SECTION IF APPOINTMENT IS SOUGHT.

1. Is it your belief that the allegedly incapacitated person is in need of a guardian/successor guardian as a means of providing continuing care and supervision of the person of said incapacitated person?
☒ YES ☐ NO If no, please explain.

2. The extent to which the guardian should be permitted to give consents or approvals that may be necessary to enable the allegedly incapacitated person to receive medical or other professional care, counsel, treatment or services is as follows:

Full extent, consistent with the allegedly incapacitated person's executed health care power of attorney. See attached as Exhibit "A".

3. The nature and extent of the care, assistance, protection, or supervision which is necessary or desirable for the allegedly incapacitated person under the circumstances is as follows:

Full extent, consistent with the allegedly incapacitated person's executed durable power of attorney. See attached as Exhibit "B".

4. Has a guardian appointed by a Will accepted such appointment?
☒ NO ☐ YES If yes, please explain.
N/A

5. I request the appointment of:

Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
Telephone (O): NA
(H): 803-261-4566
E-mail: paulas@sc.rr.com

whose priority for appointment as guardian for the subject is as follows:

☐ a person nominated to serve as guardian by the allegedly incapacitated person
☒ an attorney-in-fact appointed by the allegedly incapacitated person pursuant to Section 62-5-501
☐ spouse of the allegedly incapacitated person
☐ adult child of the allegedly incapacitated person
☐ parent of the allegedly incapacitated person
☐ other relative of the allegedly incapacitated person (Specify): ____
☐ nominated by the person who is caring for the allegedly incapacitated person or paying benefits to him/her
☐ Other (specify) ____

6. Is it necessary to appoint a temporary guardian for the subject until a hearing can be held on this Petition?
☒ NO ☐ YES If yes, please state reasons.

III. ALL PETITIONERS MUST COMPLETE THIS SECTION

1. ☒ I request that the Court set a time and place of hearing on this Petition and that the Court determine that the above person is incapacitated.

2. ☒ I request that the Court determine that the need for the appointment of a guardian is proper, and that the Court appoint Paula S. Saine as the guardian for the above person and that Letters of Guardianship be issued to the guardian.

3. The following persons are required by statute to be given notice of the time and place of hearing on this Petition: (SCPC 5-309)

Name	Address	Relationship
Mary Beth Moore Sjöberg	3825 Linwood Road Columbia, SC 29205	Allegedly incapacitated person
Paula S. Saine	3105 Grace Hill Road Columbia, SC 29204	Attorney-in-fact; Sole surviving child

VERIFICATION

The undersigned, being sworn states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 22 day of April, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29205
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

Attorney: Rita Bragg Cullum
Address: Ellis, Lawhorne & Sims, PA
PO Box 2285
Columbia, SC 29202
E-mail: rcullum@ellislawhorne.com
Telephone (O): 803-254-4190

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Guardian of the Incapacitated person of Mary Beth Moore Sjoberg.

SWORN to before me this 22 day of August, 20 11

Notary Public for South Carolina
My Commission Expires: 7/11/2015

Signature: Paula S. Saine
Name: Paula S. Saine
Address: 3105 Grace Hill Road
Columbia, SC 29204
E-mail: paulas@sc.rr.com
Telephone (O): NA
(H): 803-261-4566

FILED

2011 APR 22 PM 3:56

RICHLAND COUNTY SC

PROBATE JUDGE

HEALTH CARE POWER OF ATTORNEY

1. DESIGNATION OF HEALTH CARE AGENT

I, Mary Beth Moore Sjoberg ("Principal"), hereby appoint Paula Saine of 3105 Grace Hill Road, Columbia, SC 29204 (Telephone: (803) 261-4566) as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence in accordance with the provisions of South Carolina Code §62-5-504, as amended.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible.

Accordingly, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

4. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

5. ORGAN DONATION

My agent may MBS / may not _____ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

A. MBS GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my Agent believes the burdens of the treatment outweigh the expected benefits. I want my Agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

B. _____ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:
a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, is expected to result in death within a relatively short period of time; or
b. if I am in a state of permanent unconsciousness.

C. _____ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that:

MBS I want to receive these forms of artificial nutrition and hydration, but they may be withheld or withdrawn by my Agent under the conditions given in paragraph 6 above.

_____ I want to receive these forms of artificial nutrition and hydration, and they may not be withheld or withdrawn by my Agent.

8. SUCCESSORS

If an Agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an Agent who is my spouse is divorced or separated from me, I name the following as successors to my Agent.

Alternate Agent: John Saine
Address: 3105 Grace Hill Road, Columbia, SC 29204
Telephone: (803) 261-4566

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 14th day of October, 2010.

Signature: Mary Beth Sjoberg
Mary Beth Moore Sjoberg

WITNESS STATEMENT

We, David C. Sojourner, Jr. and Gail R. Swayne, declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that she signed or acknowledged this Health Care Power of Attorney in our presence, and that she appears to be of sound mind and under no duress, fraud, or undue influence. We are not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. We are not directly financially responsible for the principal's medical care. We are not entitled to any portion of the principal's estate upon her decease, whether under any will or as an heir by intestate succession, nor are we the beneficiary of an insurance policy on the principal's life, nor do we have a claim against the principal's estate as of this time. Neither of us are the principal's attending physician, nor an employee of the attending physician. Neither of us is an employee of a health facility in which the principal is a patient. We are not appointed as Health Care Agent or Successor Health Care Agent by this document.

Signature: David C Sojourner Jr. Date: October 14, 2010
Witness

Signature: Gail Swayne Date: October 14, 2010
Witness

Subscribed, sworn to, and acknowledged before me by Mary Beth Moore Sjoberg, the Principal, and subscribed and sworn to before me by David C. Sojourner, Jr., witness, this 14th day of October, 2010.

Gail Swayne (SEAL)
Notary Public for South Carolina
My Commission Expires: September 8, 2020

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

1. I hereby authorize all health care providers, including physicians, nurses and all other persons or entities who may have provided, or be providing, me with any type of health care, to disclose all of my protected health information:

a. To any agent designated in a Durable Power of Attorney or Health Care Power of Attorney signed by me when asked by my agent to do so for the purpose of determining my capacity as defined in the power of attorney or by governing law.

b. To the trustee, or a designated successor trustee, of any trust of which I am a beneficiary or a trustee when asked to do so for the purpose of determining my capacity as defined in the trust or by governing law.

c. To a guardian ad litem, if one is appointed for me, for the purpose of determining whether, and to what extent, a guardianship, conservatorship, or other protective proceeding for me is necessary or desirable.

2. This authorization is intended to provide my health care providers with the authorization necessary to allow each of them to disclose my protected health information to the persons described in Paragraphs a through c above, for the purpose of allowing each of them to make the specified determinations regarding my capacity or need for protective proceedings.

3. Information disclosed by a health care provider pursuant to this authorization is subject to re-disclosure and may no longer be protected by the privacy rules of 45 CFR, Section 164.

4. This authorization may be revoked by a writing signed by me or by my personal representative.

5. This authorization shall expire at the time of my death unless validly revoked prior to that date.

6. Any health care provider may rely upon a photocopy of this document for purposes of making any disclosure authorized herein.

Executed this 14th day of October, 2010.

Mary Beth Sjoberg
Mary Beth Moore Sjoberg

Witness

EXHIBIT C

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00048

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the and Summons and Petition for Incapacity and Appointment of Guardian, the originals of which are on file with the Probate Court, by the following method:

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

FILED
11 JUN -8 PM 2:12
PROBATE JUDGE
RICHLAND COUNTY, S.C.

to each of the following persons at the addresses shown:

	NAME	ADDRESS
1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
2.	Angela M. Kirby, Esquire Robert J. Thomas, Esquire Amy Landers May, Esquire	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210

Signature: _____
Name: Matt Gilreath, Courier
Ellis, Lawhorne & Sims, P.A.
Address: Post Office Box 2285
Columbia, South Carolina 29202
Telephone (O):(803) 254-4190

SWORN to before me this 6th
day of June, 2011

_____
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

EXHIBIT D

STATE OF SOUTH CAROLINA PROBATE COURT

COUNTY OF RICHLAND

IN THE MATTER OF: MARY BETH MOORE SJOBERG

CASE NUMBERS: 2011 GC40 00047

PROOF OF DELIVERY

On the 6th day of June, 2011, I, Matt Gilreath, delivered a copy of the Summons and Petition for Protective Order and Appointment of Conservator, the originals of which are on file with the Probate Court, by the following method:

FILED
JUN -8 PM 2:12
AMY H. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

[X] personal delivery
[ ] ordinary first class mail
[ ] certified mail
[ ] registered mail

to each of the following persons at the addresses shown:

	NAME	ADDRESS
1.	A. Bea Hightower, Esquire	Aiken & Hightower, P.A. 2231 Devine Street, Suite 201 Columbia, South Carolina 29205
2.	Angela M. Kirby, Esquire Robert J. Thomas, Esquire Amy Landers May, Esquire	Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Columbia, South Carolina 29210

Signature: Matthew Gilreath
Name: Matt Gilreath, Courier
Ellis, Lawhorne & Sims, P.A.
Address: Post Office Box 2285
Columbia, South Carolina 29202
Telephone (O):(803) 254-4190

SWORN to before me this 6th
day of June, 2011

Ami M. Meeks
Notary Public for South Carolina
My Commission Expires: July 3, 2012

Form #120PC (1/91)
SCPC 1-401, 3-1003, general

EXHIBIT E

6136635

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
Robert J. Thomas and Rogers Townsend & Thomas, PC,) CIVIL ACTION COVERSHEET
Plaintiff(s))
)
vs. 2012CP4006251
Richland County Probate Court;)
)
)
Defendant(s))

Submitted By:
Robert P. Wood (SC Bar #6206)
ATTORNEYS FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
(803) 343-7017 – Fax
info@rtt-law.com

RICHLAND COUNTY S.C.
2012 SEP 17 P 4:48

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts – Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-____-_____
- ☐ Notice/File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture—Petition(840)
- ☐ Forfeiture—Consent Order
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: *R. P. Wood* Date: 9/17/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Robert J. Thomas and Rogers Townsend & Thomas, PC, Plaintiff(s))
) CERTIFICATE OF EXEMPTION FROM ADR
vs.)
Richland County Probate Court;) DOCKET NO. _____
)
Defendant(s))

I certify that this action is exempt from ADR because:

☒ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;

☐ this action is appellate in nature;

☐ this is a post-conviction relief matter;

☐ this is a contempt of court proceeding;

☐ this is forfeiture proceeding brought by the State;

☐ this is a case involving a mortgage foreclosure; or

☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

2012 SEP 17 PM 4:48

Plaintiff/Attorney(s) for Plaintiff(s)
Robert P. Wood (SC Bar # 6206)
ATTORNEY FOR PETITIONERS

Rogers Townsend & Thomas, PC
220 Executive Center Drive
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900

Defendant/Attorney(s) for Defendant(s)

Date: 9/17/12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2012 SEP 17 PM 4:48

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Repsondent.

SUMMONS

TO THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Petition, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto upon the undersigned attorney at his office located at 220 Executive Center Drive, Post Office Box 100200 (29202), Columbia, South Carolina, 29210 within thirty (30) days after the service hereof, exclusive of the day of such service.

If you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for the relief demanded therein and judgment by default will be entered against you.

Robert P. Wood (SC Bar No. 6206)
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17, 2012

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC, Petitioners, vs. RICHLAND COUNTY PROBATE COURT, Respondent.	Petition for Writ of Mandamus or Writ of Certiorari (Non-Jury)

2012 SEP 17 PM 4:48

Your Petitioners would respectfully allege:

1. This Petition seeks a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg; Paula S. Saine, as the Attorney-In-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048.

2. Petitioner Robert J. Thomas is an attorney-at-law, licensed to practice law in South Carolina, with his office in Lexington County, South Carolina. He has been the attorney for Mary Beth Sjoberg for several years.

3. Petitioner Rogers Townsend & Thomas, PC is a South Carolina law firm with its principal place of business in Lexington County, South Carolina.

4. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Respondent, the Richland County Probate Court, entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate planning documents, and drafts thereof. Copies of those orders

are attached. The Court also declined to allow the Petitioners to review these files so they could ascertain the Probate's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. The Petitioners filed a motion to reconsider those orders.

5. By follow-up emails, the Court ordered Mr. Thomas and the Firm to submit a memorandum of law by September 14, 2012. A copy of that email is attached. The Court extended the deadline to today (September 17) by the attached email, but later that day ordered the production of Ms. Sjoberg's Will by 5 PM today, although it had not allowed the Petitioners to review the files.

6. The Richland County Probate Court is a court of public record and should have allowed Mr. Thomas and the Firm to review its files before the deadline for submitting a memorandum of law or producing the Will.

7. The Court had a duty to make its files available to Mr. Thomas and the Firm pursuant to Art. I § 9 of the South Carolina Constitution, the First Amendment to the United States Constitution, and the case of (and authorities cited in) Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006).

8. Producing copies of the court's records is a ministerial act.

9. The Petitioners need to see these files to ascertain the authority of the Probate Court to require the production of documents protected by the attorney-client privilege and the work produce doctrine. See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct. The Petitioners are also entitled to see these files because they are counsel for Ms. Sjoberg. Finally, the Petitioners are members of the public and are therefore entitled to see these files.

10. The Petitioners do not have any other legal remedy than a writ compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents.

11. The Petitioners have no desire to be held in contempt of court and have every intention of obeying a lawful court order. But they cannot obey an order when the court that issued it forces them to produce the Will without allowing the Petitioners an opportunity to determine the authority of the court to enter to the order.

WHEREFORE, having set forth their Petition, the Petitioners ask the Court to enter a writ of mandamus (or in the alternative a writ of certiorari) compelling the Richland County Probate Court to make its files in these cases available to the Petitioners so they can ascertain the authority of the Probate Court to order the production of attorney-client-privileged documents. Meanwhile, the Petitioners ask the Court to stay the order of the Probate Court commanding the production of the Will and related documents.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

September 17 2012

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

VERIFICATION

PERSONALLY appeared before me Robert P. Wood, who, being duly sworn, deposes and states that he is the attorney for Robert J. Thomas and the Law Firm of Rogers Townsend & Thomas; that he has read the within Petition, and that the facts stated therein are true of his own knowledge, except those matters and things alleged therein on information and belief, and as to those, he believes them to be true.

Robert P. Wood

SWORN to before me this
17th day of September, 2012

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-30-2019

2012 SEP 17 PM 4:48

Robert P. Wood

From:	JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent:	Thursday, September 06, 2012 9:42 AM
To:	Robert P. Wood; Amy Landers May
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject:	Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048
Attachments:	KMBT20020120905170144.pdf

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e). Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May

Cc: Robert Thomas; rcullum@ellisl... .orne.com; bea@aikenandhightower.com;
KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

Phone: 803-576-1962 (GC Division),
803-576-1997 (Chambers)
Fax: 803-576-1983 (GC Division)
803-576-1987 (Chambers)
E-Mail: beltonj@rcgov.us

NOTICES
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Robert P. Wood

From:	Robert P. Wood
Sent:	Thursday, September 13, 2012 3:08 PM
To:	Jonathan Spitz; KIM LEWIS
Cc:	Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May; 'JACQUELINE BELTON'
Subject:	RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Spitz and Ms. Lewis:

Judge Belton suggested I contact you about getting additional documents from these files.

Could you send me (or copy so I can pick them up) the summons and complaints in these files and proofs of service, plus any answers or motions filed by Ms. Sjoberg or anyone acting on her behalf?

I might want more, but I know I need to see these so I can check on jurisdictional issues.

Thanks!

Bob Wood
803-744-1275

Robert P. Wood
Shareholder
Direct 803.744.1275
Fax 803.343.7017
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Monday, September 10, 2012 1:46 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
Thank you for the e-mail. I hope you enjoyed your vacation.

I believe that the attachments included everything needed for you to review the documents relevant to Mr. Thomas's concerns, but please let our judicial law clerk, Mr. Spitz, or Ms. Lewis, director of our GC Division, know if you have any questions. We will look to hear from you one way or the other by Friday.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192

-----Original Message-----
From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Monday, September 10, 2012 1:40 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Judge Belton:

I am just dragging in from vacation last week and wanted to let you know that I have received and read your email. I will read your attachments right away. If they do not answer my questions, I'll have you a memorandum by September 14.

Thanks.

Bob Wood

-----Original Message-----
From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
To: Robert P. Wood; Amy Landers May
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz

Subject: Mary Beth Moore Sjoberg, .J-GC-40-00047 and 00048

Dear Mr. Wood and Ms. May:
I received Mr. Wood's Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. The Motion does not specifically cite a rule from the SCRCP as the basis for the motion; therefore, Mr. Wood's motion will be treated as a motion filed under SCRCP Rule 59(e).
Accordingly, it is within the Court's discretion to decide whether a hearing will be held on the motion or whether a memorandum of law will be submitted in lieu of a hearing. In this case, there will not be a hearing, so a memorandum of law should be submitted by Mr. Wood. I would like the memorandum to be submitted no later than Friday, September 14, 2012. I am not requesting submission of a memorandum or any response from either Ms. Hightower or Ms. Cullum, as this appears to be an issue between the Court and Mr. Thomas.

The motion makes reference to the fact that Ms. May was not allowed to examine the files, which is our standard policy concerning all guardianship and conservatorship files. However, we regularly receive and respond to requests for specific documents from those files. As I understood Ms. May's request to Kim Lewis, the director of our Guardianship and Conservatorship (GC) Division, she asked for copies of notice and proofs of delivery. I am not aware of the request for any orders, which might have answered any additional questions that either Mr. Wood or Mr. Thomas had. Accordingly, attached in PDF format are all of the appointment orders from the guardianship and conservatorship files, as well as copies of the notices sent to the parties concerning the early status hearing in the case. Orders regarding rulings about Pope Johnson continuing to serve as Ms. Sjoberg's attorney and his attorney's fees are also included. None of the orders were ever appealed.

Lisa Hostettler is coming over for a hearing today, so we will give her an envelope for Mr. Wood, which will contain the $25.00 check submitted with the Motion to Reconsider and Claim of Privilege Pending Review of the Court's File. We do not charge for any motions filed in our GC Division. In estate cases we only charge for Motions for Extension of Time, and that is a $25.00 fee. As everyone is being copied with this e-mail, the attached documents will not be sent out by mail or be left at the front desk to be picked up by your courier. Therefore, please confirm receipt of this e-mail.

Sincerely,
Jackie Belton

Jacqueline D. Belton
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704-442-9500 (Charlotte office) or r . eturn e-mail, and destroy any copies (ele . nic, paper, or otherwise) that you may have of this communication.

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Robert P. Wood

From: Robert P. Wood
Sent: Thursday, September 13, 2012 4:11 PM
To: 'Jonathan Spitz'; 'KIM LEWIS'
Subject: Sjoberg

I would also like to see the notice of the hearing held on May 9 and proof of service of that notice.

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
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Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Thursday, September 13, 2012 4:58 PM
To: Robert P. Wood; Jonathan Spitz; KIM LEWIS
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; Amy Landers May
Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

Mr. Wood:
I just got out of a long hearing. There will be no problem with you receiving the documents you requested. The quickest way to get them to you would be to scan and e-mail them, if that works for you. However, as that can't be done until tomorrow I can give you until next Monday to get your response to me, if needed.

Please let us know if that works for you.

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
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Bob Wood
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Subject: RE: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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From: JACQUELINE BELTON [mailto:BELTONJ@rcgov.us]
Sent: Thursday, September 06, 2012 9:42 AM
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Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@aikenandhightower.com; KIM LEWIS; Jonathan Spitz
Subject: Mary Beth Moore Sjoberg, 2011-GC-40-00047 and 00048

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Robert P. Wood

From:	Robert P. Wood
Sent:	Thursday, September 13, 2012 6:36 PM
To:	'Jonathan Spitz'; 'KIM LEWIS'
Cc:	JACQUELINE BELTON (BELTONJ@rcgov.us)
Subject:	Sjoberg

Could you also scan and email to me:

The report by the visitor who went to Ms. Sjoberg's residence.

I don't see an order among the papers you sent me indicating that Ms. Sjoberg did not have counsel of her choice when this proceeding was commenced. (I understand from Bob Thomas that she did and that it was Bob Thomas). Is there something in the file about this that I missed?

There is apparently an order directing Pope Johnson to have Ms. Sjoberg assessed to determine whether she had contractual capacity to retain counsel or execute a power of attorney. Could you send me that?

Could I see the reports of Dr. Nelson and Dr. Brannon?

Thanks.

Bob

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1275
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com
Admitted in SC and USVI

Robert P. Wood

From: JACQUELINE BELTON <BELTONJ@rcgov.us>
Sent: Friday, September 14, 2012 5:58 PM
To: Robert P. Wood
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS; mike@belserpa.com
Subject: RE: Sjoberg

Dear Mr. Wood:
Kim Lewis was out sick today, and I have been swamped with hearings and getting out an emergency order. Therefore, I have not had a chance to scan and send anything out. As I indicated in my previous e-mail, we can certainly send the documents to you. However, if the basis for not turning over the original Will to the Court is the jurisdictional issues you have raised, then those issues could have and should have been raised by Mr. Johnson when he was representing Ms. Sjoberg. Mr. Johnson made no timely appeal any of the orders in the case and he was involved at an early enough point to have appealed any or all of the orders, if he so chose. In addition, Mr. Polk reviewed the entire file when he was appointed to represent Ms. Sjoberg, and he did not raise those issues with the Court either, nor did he seek to have any prior orders vacated on the basis of jurisdiction or any other grounds.

Accordingly, if Mr. Thomas is not going to turn over the original Will to the Court, as my amended Order directed, then the original should be scanned and e-mailed to me by Monday, or your courier can drop off a copy before we close on Monday afternoon.

Thanks and have a good weekend.

Sincerely,
Jackie Belton

Jacqueline D. Belton
Associate Probate Judge
Richland County Probate Court
P.O. Box 192
Columbia, S.C. 29202-0192
Phone: 803-576-1962 (GC Division)
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E-Mail: beltonj@rcgov.us

From: Robert P. Wood [mailto:Robert.Wood@rtt-law.com]
Sent: Friday, September 14, 2012 5:26 PM
To: JACQUELINE BELTON
Cc: Robert Thomas; rcullum@ellislawhorne.com; bea@alkenandhightower.com; Amy Landers May; Jonathan Spitz; KIM LEWIS
Subject: Sjoberg

Judge Belton: I did not receive any documents from your office today. There is about a 10% chance I will have a jury trial in Lexington Monday. Barring such a trial, if I receive your documents Monday morning, I should be able to get you my brief by the end of the day Monday or certainly by the end of the day Tuesday.

If you are pressed for time, the main ..ngs I'd like to see as soon as possible are

the affidavit of service of the summonses and petitions on Mrs. Sjoberg;
the affidavit of service of the notice of the 5/9/11 hearing; and
evidence that the appointment orders dated May 12, 2011 were mailed to or served on Ms. Sjoberg personally.

All these go, of course, to whether the court had personal jurisdiction over Ms. Sjoberg and whether she was afforded timely notice and an opportunity to be heard before entry of the appointment orders that resulted in the order requiring our firm to turn over material that we feel is covered by the attorney-client privilege and the work product doctrine.

But I would still like to see the other documents when you can get to them. I have, by the way, now seen Dr. Nelson's report.

Thanks.

Bob Wood

ROGERS TOWNSEND
ATTORNEYS AT LAW

Robert P. Wood
Shareholder

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 ORDER FOR RELEASE OF CLIENT DOCUMENTS

2012 JUL 31 PM 12:41
RITA B. CULLUM
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER COMES BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

A conference regarding the status of the permanent Guardianship and Conservatorship appointments of Ms. Saine was held July 13, 2012, in chambers. Present at the status conference were Rita Bragg Cullum and A. Bea Hightower. At the status conference the Court discussed the payment of attorneys' fees and Guardian *ad Litem* fees, the estate planning documents of Ms. Sjoberg, and the status of the Guardianship and Conservatorship of Ms. Sjoberg going forward.

Ms. Saine is the Attorney-in-Fact for Ms. Sjoberg under a Healthcare Power of Attorney dated October 14, 2010, and a Durable Power of Attorney, although never recorded, executed by

Ms. Sjoberg. Ms. Saine was appointed as the Temporary Guardian and Temporary Conservator for Ms. Sjoberg by Order of this Court dated May 12, 2011. That this Court expects that Ms. Saine's temporary appointments will become permanent appointments.

That this Court is informed and believes that certain estate planning documents executed by Ms. Sjoberg are currently in possession of the law firm of Rogers, Townsend & Thomas, PC. That the attorney and Guardian *ad Litem* for Ms. Sjoberg informed the Court that she has contacted Robert J. Thomas, former long-time attorney for Ms. Sjoberg, and attorney Amy Landers May, both of Rogers, Townsend & Thomas, PC of this request. The attorney for Ms. Saine and the attorney and Guardian *ad Litem* of Ms. Sjoberg have requested that these certain estate planning documents and any and all documents pertaining to a rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, be turned over to Ms. Saine as the Temporary Guardian and Conservator for Ms. Sjoberg and that this Court authorize Rogers, Townsend & Thomas, PC to produce these certain documents. After considering the request of the attorney for Ms. Saine and the attorney and Guardian *ad Litem* for Ms. Sjoberg, the Court finds that the request is appropriate and that in order for the Temporary Guardian and Conservator to fulfill her fiduciary duties to her ward, it is in the best interests of Ms. Sjoberg for her Attorney-in-Fact and Temporary Guardian and Conservator to be in possession of her estate planning documents and the rental property agreement.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all estate planning documents, not just final or most recent versions of those certain estate planning documents, executed by Mary Beth Sjoberg, including, but not limited to, Last Will

and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas; to Paula S. Saine, as the Attorney-in-Fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg within thirty (30) days of the date of this Order.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work produot doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

July 31, 2012
Columbia, South Carolina

A TRUE COPY
ATTEST:
AMY W. McCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, SC
by:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF MARY BETH SJOBERG PAULA S. SAINE, AS THE ATTORNEY-IN-FACT FOR MARY BETH SJOBERG, PRINCIPAL, AND AS THE DAUGHTER OF MARY BETH SJOBERG, TEMPORARY GUARDIAN and CONSERVATOR.	IN THE PROBATE COURT Case Numbers: 2011-GC-40-00047 2011-GC-40-00048 AMENDED ORDER FOR RELEASE OF CLIENT DOCUMENTS

2012 AUG 24 PM 3:35
AMY M. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

FILED

TO: Rogers, Townsend & Thomas, PC
c/o Amy Landers May
Synergy Business Park
220 Executive Center Drive
Columbia, SC 29210

THIS MATTER CAME BEFORE THE COURT upon the request of Rita Bragg Cullum, attorney for Paula S. Saine (hereinafter "Ms. Saine"), Temporary Guardian and Conservator for Mary Beth Sjoberg (hereinafter "Ms. Sjoberg"), and A. Bea Hightower, attorney and Guardian *ad Litem*, for Ms. Sjoberg, that the estate planning documents of Ms. Sjoberg be turned over to Ms. Saine as Temporary Guardian and Conservator of Ms. Sjoberg.

An Order was issued by this Court on July 31, 2012 in which the law firm of Rogers, Townsend & Thomas, PC (hereinafter "RTT") was authorized to produce and release and was directed to immediately produce and release any and all estate planning documents, not just final or most recent versions, of estate planning documents executed by Mary Beth Sjoberg. The documents included, but were not limited to, Last Will and Testaments; trusts, revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and business affairs or healthcare; whether original or copy,

including copies in digital format or electronically stored. Reference is made to the July 31st Order for the background concerning this matter. The Order further required that whoever had actual possession of the requested documents, whether they were in the possession of RTT and/or attorney Robert J. Thomas, turn the documents over to Paula S. Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg

That this Court is informed and believes that some of the requested estate planning documents may have been turned over to Ms. Hightower, as attorney and Guardian *ad Litem* for Ms. Sjoberg, and/or to Paula Saine, as attorney-in-fact of Ms. Sjoberg and Temporary Guardian and Conservator for Ms. Sjoberg. However, the Court was copied on a letter sent by Mr. Thomas to Ms. Hightower which stated that some documents would be turned over, but expressed concerns about the general nature of the request and concerns about violating attorney-client privilege by turning over other materials from his files. Given that concern, this Court is amending its prior order to clarify what materials are being requested from the files of attorney Robert J. Thomas and/or RTT. Though some documents may have already been turned over by Mr. Thomas, for the sake of clarity this Amended Order will restate all of the documents that are stated in the previous order and will further clarify to whom remaining documents are to be given.

THEREFORE, IT IS HEREBY ORDERED:

A. That the law firm of Rogers, Townsend & Thomas, PC is authorized to produce and release and shall immediately produce and release any and all actual estate planning documents, not just final or most recent versions of those estate planning documents executed by Mary Beth Sjoberg, including, but not limited to: Last Will and Testaments; trusts, either revocable or irrevocable, inter vivos or testamentary; and Powers of Attorney, whether durable or not, and whether relating to financial and

business affairs or healthcare; whether original or copy, including copies in digital format or electronically stored; whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

B. That Rogers, Townsend & Thomas, PC, is authorized to produce and release and shall immediately produce and release any and all documents related to the rental property agreement for the real property located at 2600 Millwood Avenue, Columbia, South Carolina, 29205, Tax Map Number R11413-03-01, for which Ms. Sjoberg is the owner, whether in possession of Rogers, Townsend & Thomas, PC and/or attorney Robert J. Thomas. Any such documents that have not been turned over to Ms. Hightower and/or Ms. Saine as of the date of this Order are to be turned over to the Richland County Probate Court for examination and safekeeping, no later than August 30, 2012. If no such documents exist, Mr. Thomas and RTT are to so inform this Court.

C. That nothing in this Order shall be construed as requiring Rogers, Townsend & Thomas, PC or attorney Robert J. Thomas to produce or disclose any documents protected under the work product doctrine, and shall not be construed as a waiver of the attorney-client privilege by Rogers, Townsend & Thomas, PC, or attorney Robert J. Thomas. However, as no documents protected under the work product doctrine are requested, RTT and Mr. Thomas are expected to turn over all documents in their possession as described in Paragraphs A and B of this Order.

AND IT IS SO ORDERED.

Jacqueline D. Belton, Associate Judge
Richland County Probate Court

August 24, 2012
Columbia, South Carolina
Nunc Pro Tunc to July 31, 2012

EXHIBIT F

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
2012-CP-40-06251

RICHLAND COUNTY
FILED
2012 DEC 11 AM 10:03
JEANNETTE W. RICHBURG
C.C.P. & G.S.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC,

Petitioners,

vs.

RICHLAND COUNTY PROBATE COURT,

Respondent.

Return to Motion to Dismiss

(Respondent has Complied So Case is Moot)

1. The Petition in this case sought a writ of mandamus or writ of certiorari commanding the Richland County Probate Court to turn over to the Petitioners copies of the Probate Court's file in the cases of In the Matter of Mary Beth Sjoberg; Paula S. Saine, as the Attorney-In-Fact for Mary Beth Sjoberg, Principal, and as the Daughter of Mary Beth Sjoberg, Temporary Guardian and Conservator, Civil Action Nos. 2011-GC-40-00047 and 2011-GC-40-00048. The Petitioners sought these files to determine whether the Probate Court had the authority to issue an order requiring the Petitioners to turn over various attorney-client privileged documents.[1] If the Court had that authority, the Petitioners would turn them over; if the Court order were not authorized by law, the Petitioners could not turn them over because do to so would violate the Rules of Professional Conduct.

2. Although Ms. Sjoberg is a living person, and although no court has adjudicated her to be without testamentary capacity, the Probate Court entered two orders (on July 31 and August 24, 2012) requiring the Respondents to produce Ms. Sjoberg's current Will, her estate

[1] See Comment 14 to Rule 1.6 of the South Carolina Rules of Professional Conduct.

planning documents, and drafts thereof.[2] The Court declined to allow the Petitioners to review these files so they could ascertain the Probate Court's authority to enter an order as unusual as one requiring a lawyer to produce his living client's Will, her estate planning documents, and drafts thereof. Yet the Court persisted in compliance with its order even while it continued to deny the Petitioners access to documents that would enable them to verify that the order was authorized. (In the context of this case, the issue was whether the Probate Court had personal jurisdiction over the Petitioners' client such that it could assume control of her financial affairs.)

3. Not wanting to be held in contempt for refusing to comply with the court order, but not wanting to release attorney-client-privileged documents pursuant to an order issued by a court that might very well not have jurisdiction, the Petitioners filed and served this lawsuit on September 17, 2012, the deadline set for compliance with the Probate Court's order.

4. On October 18, 2012, the Probate Court took three actions:

a. The Probate Court released to the Petitioners all of the portions of its files that the Petitioners felt they needed in order to ascertain whether the orders were authorized;

b. The Probate Court provided the Petitioners with a certification from its counsel that all of the Probate Court's files had been turned over except for certain documents described in detail that the Petitioners did not need to see; and

c. The Probate Court entered an order saying that it had released the files in the exercise of its discretion and not because it had to.

---

[2] The Probate Court entered an order denying the Petitioners' motion to reconsider last week, and the Petitioner has appealed that order to the Circuit Court.

5. In sum, on October 18, the Probate Court provided the Petitioners with the relief they sought in this lawsuit.[3]

8. Because the Probate Court has now provided the file documents and certification of completeness that the Petitioners sought in this lawsuit, the Petitioners believe this lawsuit is now moot, and they so inform the Court.

Robert P. Wood
SC Bar No. 6206
Rogers Townsend & Thomas, PC
220 Executive Center Drive (20210)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@rtt-law.com

Counsel for the Firm

December 7, 2012.

[3] Issues involving some language of the order issued when the Probate Court turned over its file to the Petitioners remained unresolved until today.

CERTIFICATE OF SERVICE BY MAIL
C/A No: 2012-CP-40-06251

I, Sheri H. McClendon, a paralegal with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on December 7, 2012, the following addresses:

RICHLAND COUNTY
FILED
2012 DEC 11 AM 10:08
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Document Served:

Return to Motion to Dismiss

Counsel Served:

Desa Ballard, Esq.
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, SC 29171

Sheri H. McClendon
Paralegal to Robert P. Wood

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047 Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg Petitioner,	)	Certificate of Service
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine, Respondents.	)	

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 27th day of February 2014, I served ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Memorandum In Support of Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rite Bragg Caughman, Esquire
Adams & Reese, L.L.P.
Post Office Box 2285
Columbia, South Carolina 29202

Arthur K. Aiken, Esquire
Aiken & Hightower, P.A.
Suite 201
2231 Devine Street
Columbia, South Carolina 29205

Laura J. Fetner

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ex Parte Robert J. Thomas and Rogers Townsend & Thomas, PC In the Matter of Mary Beth Sjoberg Paula S. Saine, as the Attorney-in-Fact for Mary Beth Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg, Temporary Guardian and Conservator.	)	IN THE PROBATE COURT Case No. 2011-GC-40-00047 and 2011-GC-40-00048 **MEMORANDUM IN OPPOSITION MOTION TO RECONSIDER MADE BY ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC**

STATEMENT OF THE CASE

This case began as an action for appointment of Paula Saine (PS) as the guardian and conservator for her elderly mother, Mary Beth Moore Sjoberg (MBMS). This Court entered an Order and an Amended Order requiring the law firm and the lawyer that prepared MBMS's estate planning documents, Rogers Townsend & Thomas, PC (RTT) and Robert J. Thomas (RJT) of that firm, to produce them to MBMS's Guardian ad litem, Annie Bea Hightower (ABH) and any documents not already produced to ABH were to be turned over to the Richland County Probate Court for examination and safekeeping.

RTT and RJT objected to the Production Orders, and RTT personnel signed and filed several documents setting forth the factual and legal arguments in support of their objections to the Production Orders. PS made a Motion for Sanctions in which she asserted that RTT and RJT violated the South Carolina Frivolous Civil Proceeding Sanctions Act (SCFCPSA), S.C. Code § 15-36-10, and Rule 11 SCRCP in making their objections to the Production Orders.

On January 2, 2015 this Court entered an Order (Sanctions Order) granting PS' Motion for Sanctions. RJT and RTT filed and served a Motion to Reconsider the Sanctions Order on

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January 15, 2015. PS submits the following Memorandum in opposition to the Motion to Reconsider made by RJT and RTT.

STATEMENT OF THE FACTS

On January 11, 2011, RJT sent PS an executed copy of a Will of MBMS that was signed by MBMS on November 12, 2010. This Court appointed PS Temporary Guardian and Temporary Conservator for MBMS under Orders. On July 31, 2012, this Court entered an Order (Production Order, App 8) that compelled RJT and RTT, as estate counsel for MBMS, to produce MBMS's estate planning documents to PS, as Attorney-in-Fact of MBMS and Temporary Guardian and Conservator for MBMS. This Court entered an Amended Order on the same subject on August 24, 2012 but clarified that any documents not already produced to ABH and/or PS were to be turned over to the Richland County Probate Court for examination and safekeeping. Thomas and RTT did not produce Sjoberg's estate documents to ABH or PS or to the Richland County Probate Court. Instead, they filed, on August 30, 2012, a Motion to Reconsider and Claim of Privilege that attacked this Court's August 24, 2012 Order. RJT and RTT filed two Memoranda in support of the Motion to Reconsider. Taken together, these Memoranda advance the following arguments:

- this Court's Appointment Orders were invalid because this Court had no personal jurisdiction over Sjoberg for want of service of the initial pleadings on her;
- this Court's Appointment Orders were invalid under the due process clause because Sjoberg was not given notice of the May 9, 2011 appointments hearing;
- this Court's Appointment Orders were invalid because this Court denied Sjoberg the right to counsel of her choice;
- this Court's Production Orders were invalid because this Court had no subject matter jurisdiction to order production of Sjoberg's estate planning documents: and
- this Court's Production Orders were invalid because they compelled Thomas and RTT to violate the attorney-client privilege arising from their representation of Sjoberg.

After review of the parties' written submissions, this Court denied the Motion to Reconsider by Order filed December 4, 2012.

RJT and RTT filed a Notice of Appeal. On January 17, 2013, Thomas and RTT filed a document in the Circuit Court styled Grounds of Appeal. The Grounds of Appeal restates the arguments set forth in the Memoranda in support of the Motion to Reconsider. The parties to the appeal submitted briefs, and the Circuit Court heard oral argument. The Circuit Court took the appeal under advisement. While the appeal was under advisement, MBMS died. Because of MBMS death, the Circuit Court dismissed the appeal as moot by Order dated January 10, 2014. MBMS's GAL, ABH, received written notice of entry of the Circuit Court's January 10, 2014 Order on January 11, 2014. The Motion for Sanctions was made on January 21, 2014.

After MBMS's death, RTT and RJT filed the Will of MBMS for probate. The Will of MBMS filed by RTT and RJT for probate was the exact same executed Will signed by MBMS on November 12, 2010 that RJT had sent to PS on January 11, 2011.

The Motion for Sanctions asserts that signing and filing of the Motion to Reconsider and the two Memoranda in support of that Motion, violate the SCFCPSA and Rule 11(a) SCRCP for the following reasons:

- a reasonable attorney in these circumstances would believe that under the facts, the position advanced in those filings was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification or reversal of existing law;
- a reasonable attorney presented with the same circumstances would believe those filings were frivolous;
- a reasonable attorney would believe that the arguments advanced in those filings were frivolous as not warranted under existing law or any good faith argument for the extension, modification, or reversal of existing law;
- a reasonable attorney would believe that the arguments advanced in those filings were

frivolous as not reasonably supported by the facts;

- those filings are frivolous;
- the arguments made in those filings are frivolous.

PS and the probate estate of MBMS have incurred substantial attorneys' fees and costs in responding to the Motion to Reconsider and to the two Memoranda in support of that Motion.

ARGUMENT

I. THE PURPOSES FOR A MOTION UNDER RULE 59(e) SCRCP

A motion under Rule 59(e) SCRCP can serve two purposes. First, the motion must be made to preserve for appellate review issues that the moving party raised to the trial court but that were not explicitly addressed in the trial court's order. Elam v SCDOT, 361 S.C.9, 602 S.E.2d 772 (2004). Second, the motion may be made in an effort to convince the trial court to reconsider the result reached in its order and rule in favor of the moving party. Elam, 361 S.C. at 24, 602 S.E.2d at 775. RJT and RTT explicitly make their Motion to Reconsider for both of these purposes.

II. SCOPE OF ISSUES THAT CAN BE RAISED IN A MOTION UNDER RULE 59(e) SCRCP

Regardless of the purposes driving the filing of a motion under Rule 59(e), the issues that can be addressed in such a motion are restricted to issues raised initially before the trial court. Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009) (party cannot use Rule 59(e) motion to present to trial court an issue that party could have raised prior to judgment but did not); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). "A party cannot use Rule 59(e), SCRCP, to present 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 128, 131-132 (Ct. App. 1995); *rev'd* on other grounds, 329 S.C. 385, 496 S.E. 21 (1998) (citing Hickman, supra). The issues properly

before this Court on the Motion to Reconsider are limited to issues raised by RJT and RTT to this Court before the entry of the Sanctions Order.

III. OVERVIEW OF THE SCFCPSA AND RULE 11 SCRCP.

A. SCFCPSA

Under the SCFCPSA, an attorney or litigant may be sanctioned for filing a frivolous pleading, motion or document if "a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith argument did not exist for the extension, modification, or reversal of existing law" S.C. Code § 15-36-10(A)(4)(a)(ii) or "a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous." S.C. Code § 15-36-10(A)(4)(a)(iv).

An attorney or litigant may also be sanctioned under the SCFCPSA for "making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts" S.C. Code § 13-36-10(A)(4)(b) and for "making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." S.C. Code § 15-36-10(A)(4)(c). Sanctions under the SCFCPSA may include "an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party." S.C. Code § 15-36-10(G)(1).

The party making the motion for sanctions under S.C. Code § 15-36-10 has the burden of proof. S.C. Code § 15-36-10(C)(2). To meet this burden of proof, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. S.C. Code § 15-36-10(C)(2).

B. RULE 11 SCRCP

Under Rule 11 SCRCP, "[T]he signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Rule 11(a) SCRCP. "[A] party and/or the party's attorney may be sanctioned (under Rule 11(a) SCRCP) for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." Runyon v. Wright, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (parenthetical added). "If a pleading, motion or other paper is signed in violation of this Rule (Rule 11(a) SCRCP), the court upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Rule 11(a) SCRCP (parenthetical added).

The party moving for sanctions under Rule 11 SCRCP has the burden of proof. To meet this burden, the moving party need only show that the preponderance of evidence supports the imposition of sanctions. Clegg v Lambrecht, 678 S.E.2d 260, 262 (S.C. App. 2009) ("the party moving for sanctions has the burden to establish the grounds for sanctions by a preponderance of the evidence.") (citing Rutland v Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 97, 637 S.E.2d 316, 319 (Ct. App. 2006)).

IV. PS HAD AUTHORITY TO PROSECUTE THE SANCTIONS MOTION AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MBMS.

According to S.C. Code § 62-3-703(c), [e]xcept as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State ... as his decedent had

immediately prior to death." The decision whether to impose sanctions sounds in equity. The Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003). "As a general rule, the maxim 'Actio personalis moritur cum persona' was not applied within the jurisdiction of equity." Page v. Lewis, 203 S.C. 190, 194, 26 S.E.2d 569, 570 (1943) (citations omitted). In other words, the rule that personal actions die with the person does not apply in the jurisdiction of equity. MBMS's claim for sanctions survived her death, and as the Personal Representative, PS has the authority to pursue that claim.

With no authority to contest the point that PS had the authority to pursue sanctions against the as Personal Representative of MBMS' Estate, RJT and RTT resort to a hyper technical argument that PS is not listed in the caption of the Motion for Sanctions as Personal Representative of MBMS' estate. (Memo. in Supp. Motn. Recons. Sanct. Ord. pp. 4-5). The caption is the original caption of the case because that is the case in which sanctions are being sought. Rule 17 requires that "[e]very action shall be prosecuted in the name of the real party in interest." The Motion for Sanctions was prosecuted in the name of PS, who unquestionably has full authority as Personal Representative of her mother's Estate to pursue sanctions against RJT and RTT. Moreover, any doubt as to the capacity in which PS was pursuing sanctions was fully resolved on service of PS' Memorandum in Support of Motion for Sanctions in which PS argued that she had the capacity to pursue sanctions as Personal Representative of her mother's Estate. (Memo. In Supp. of Motn. For Sanct. pp. 5-6).

V. PS' SCFCPSA CLAIM IS NOT BARRED AS UNTIMELY.

Our state has "established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Pittman v Republic Leasing Company, Inc., 351 S.C. 429, 432, 570 S.E.2d 187, 190 (Ct. App. 2002). (emphasis added). In Pittman, the Court of

Appeals addressed the issue of the limitations period applicable to SCFCPSA claims. The moving party in Pittman made its motion for sanctions almost two months after final judgment. Vacating the trial court's award of sanctions, the Pittman court "refuse[d] to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment." Pittman, 351 S.C. at 432, 570 S.E.2d at 189-190.

The Court of Appeals followed Pittman with Ex parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004). In Ex parte Beard, the moving party made his SCFCPSA motion for sanctions almost six months after the main case was dismissed with prejudice. The trial court dismissed the SCFCPSA motion for sanctions as untimely. The Ex parte Beard court affirmed the trial court's dismissal of the SCFCPSA motion for sanctions based on the holding that "a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed." Ex parte Beard, 359 S.C. at 357, 597 S.E.2d at 838.

Both Pittman and Ex parte Beard analogize SCFCPSA motions for sanctions to the post-trial motion to alter or amend under Rule 59(e) SCRCP. Pittman, 351 S.C. at 432, 570 S.E.2d at 189, Ex parte Beard, 359 S.C. at 358, 597 S.E.2d at 838. Rule 59(e) SCRCP states that "[A] motion to alter or amend a judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." (emphasis added) Since the Court of Appeals has twice recognized that motions made under Rule 59(e) SCRCP are the closest analog to SCFCPSA motions for sanctions, it stands to reason that they should have the same limitations period.

Motions for sanctions under the SCFCPSA must be filed within ten (10) days of notice of final judgment. Pittman v Republic Leasing, 351 S.C. 429, 432, 570 S.E.2d 187, 189-190; Ex Parte Beard, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004). The judgment of the Probate Court in these conservatorship and guardianship actions did not become final until, at the

earliest, the date on which MBMS' GAL, ABH, received written notice of the Circuit Court's Order dismissing the appeal as moot. RJT and RTT filed an interlocutory appeal, and much was left to be done in the probate court at the time of that appeal before the probate court produced a final judgment in these actions. No permanent guardian or permanent conservator had been appointed for MBMS, so the actions in the probate court had not reached the level of anything like a final judgment at the time of the appeal. MBMS' GAL, ABH, received written notice of the Circuit Courts January 10, 2014 Order dismissing the appeal as moot on January 10, 2014. The Motion for Sanctions was made on January 21, 2014.

RJT and RTT assert in their Memorandum that ABH received written notice of the Circuit Court's Order dismissing the appeal of RJT and RTT on January 10, 2011. (Memo. In Supp. Mtn. Recons. p. 7, n. 2). Even if this is correct, PS' claims for SCFCPSA sanctions made in the Motion for Sanctions were timely. SCFCPSA claims have the same deadline as post-trial motions, ten (10) days after written notice of entry of a final judgment. Rule 6 SCRCP states the general rule that deadlines are extended to the next day that is not a holiday if the deadline falls on a holiday. The deadline for making the SCFCPSA claim in the Motion for Sanctions fell, by the calculations of RJT and RTT, on January 20, 2014. January 20, 2014 was a holiday (Martin Luther King, Jr.'s Birthday), so the deadline for making the SCFCPSA claim in the Motion for Sanctions was January 21, 2014, the day that PS filed and served her Motion for Sanctions.

VI. EVEN IF PS' SCFCPSA CLAIM IS BARRED AS UNTIMELY, HER RULE 11 SCRCP CLAIM IS TIMELY.

"There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment." Russell v Wachovia Bank, 370 S.C. 5, n. 11, 633 S.E.2d 722, n.11 (2006). In support of this proposition our Supreme Court in Russell cited our Court of Appeals' decision in Ex Parte Beard, 359 S.C. 351, 597 S.E.2d 835 (Ct. App. 2004).

In Ex Parte Beard, the Court of Appeals affirmed an order of the trial court that addressed a Rule 11 SCRCP motion even though the motion was made six months after the underlying action was settled and dismissed with prejudice. Ex Parte Beard, 359 S.C. at 359-360, 597 S.E.2d at 839. In fact, whether PS's Motion for Sanctions proceeds under the SCFCPSA or Rule 11 SCRCP, makes no difference because the criteria for awarding sanctions under Rule 11 SCRCP and the SCFCPSA are essentially the same. The Father, 345 S.C. at 72, 545 S.E.2d at 531.

VII. RULE 1.6(a), RULE 407, SCACR, PERMITTED RJT AND RTT TO ASSERT ONLY NONFRIVOLOUS CLAIMS THAT THE PRODUCTION ORDERS WERE NOT AUTHORIZED AND NONFRIVOLOUS CLAIMS THAT MBMS' WILL WAS PROTECTED FROM COMPELLED DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE

Rule 1.6(a) RPC, Rule 407, SCACR states that "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1.6(b)(7) RPC, Rule 407, SCACR states that a lawyer may reveal information relating to the representation of a client to the extent the lawyer believes necessary "to comply with other law or a court order." Comment 16 to Rule 1.6 RPC, Rule 407, SCACR states that when confronted by an order to reveal information relating to the representation of a client, "the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." (emphasis added).

Throughout the proceedings on the Motion for Sanctions, RJT and RTT have asserted that the Production Orders, which they violated. were unenforceable against them because those Production Orders were not authorized by other law (personal jurisdiction and constitutional Due Process) and because those Production Orders sought information (MBMS' Will) that was

protected against disclosure by the attorney-client privilege. The core question concerning sanctions in this case is whether the arguments made by RJT and RTT that the Production Orders were unauthorized under law and that MBMS' Will was protected from compelled disclosure by the attorney-client privilege are frivolous. The analysis below demonstrates that all of these arguments are frivolous.

VIII. ALL OF THE ARGUMENTS MADE BY RJT AND RTT THAT THE PRODUCTION ORDERS WERE UNAUTHORIZED ARE FRIVOLOUS

A. Introduction

RJT and RTT assert that they presented nonfrivolous arguments that the Production Orders were not authorized. The arguments that RJT and RTT advanced on the authorization issue find their sources in the areas of law having to do with personal jurisdiction and procedural due process. A reasonable attorney would believe that the arguments of RJT and RTT on the personal jurisdiction and procedural due process issues were frivolous as having no good ground to support them.

B. The personal jurisdiction arguments of RJT and RTT were frivolous

According to Rule 12(h) SCRCP, "[a] defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." The attorney representing MBMS on the Petitions for Guardianship and for Conservatorship, Pope Johnson, made no motions that raised the defense of lack of jurisdiction over the person of MBMS and filed an Answer to the Petitions that did not raise any defense of lack of jurisdiction over the person of MBMS. (Answer to Petition for

appointment of Guardian, Answer to Petition for appointment of Conservator, App. 26 - 34) The defense of lack of jurisdiction over the person was waived, and any reasonable attorney reviewing the facts of this case would conclude that any argument asserting this waived defense is frivolous.

According to S.C. Code § 62-5-310(A), "[i]f the (probate) court makes emergency preliminary findings that:

(1) a physician has certified, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the (probate) court, with or without petition or notice, may appoint a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311." (parentheticals added and emphasis added)

S.C. Code § 62-5-310(A) clearly authorized this Court to proceed with the temporary appointment hearing for a guardian for MBMS that was held on May 9, 2011 without notice to MBMS. Any argument that proceeding with the temporary appointment hearing on May 9, 2011 somehow required personal service on MBMS has no basis in law or fact, and a reasonable attorney would consider that argument frivolous.

The attorney who represented MBMS at the October 26, 2011 hearing to consider PS's Petitions to be appointed as permanent conservator and permanent guardian of MBMS, Pope Johnson, was instructed by this Court before that hearing to present evidence at the hearing that MBMS had contractual capacity to retain him. "South Carolina has defined contractual capacity as a person's ability to understand, at the time that the contract is executed, the nature of the contract and its effect." In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854, 857 (Ct. App. 2001) (citing In re: Nightingale's Estate, 182 S.C. 527, 542, 189 S.E. 890, 896 (1937).

Pope Johnson presented a report of William Brannon, MD in which Dr. Brannon gave his opinion that MBMS had only testamentary capacity. (Report of William Brannon, MD, App. 64) "The capacity of a testator to make a will is tested by whether he (1) knew his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977) (citing Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E. 811 (1926)). Testamentary capacity has a lower threshold than contractual capacity, so Dr. Brannon's opinion left this Court with no evidence that MBMS had contractual capacity to retain Pope Johnson. In the absence of any evidence that MBMS had contractual capacity, this Court quite rightly ruled that Pope Johnson's agreement with MBMS to provide legal services was void and removed Pope Johnson as MBMS's attorney.

Having relieved Pope Johnson, This Court appointed Michael Polk (Polk) to act as MBMS's attorney. As MBMS's attorney, Polk interviewed her on two separate occasions reviewed the case file and conducted an investigation regarding her legal interests. (Polk Report, App. 68) As requested by this Court, Polk filed a written report in which he stated, without reservation, that MBMS's legal rights were adequately protected. (Polk Report, App. 68)

RTT and RJT assert that because Mr. Polk was not specifically directed in the Orders appointing him to advocate the jurisdictional issues raised in their Motion to Reconsider, Polk was limited in the scope of his representation and could not waive the jurisdictional issue on behalf of MBMS. This argument ignores the fact that Polk, as an officer of this Court and as an experience practitioner, does not need direction by this Court to adequately represent MBMS.

Polk reviewed all issues presented and specifically noted the procedural defects as alleged by RTT and RJT. Polk investigated the legal rights of MBMS and found that her interests did not lay in challenging the removal of Pope Johnson as her attorney, nor did they lay

in raising procedural defects of process which would prolong the proceedings and create greater anxiety for MBMS. After consulting with his client on two separate occasions, thoroughly reviewing this Court's file, and interviewing necessary participants, Polk concluded that MBMS's rights had been protected and were adequately represented.

Polk fulfilled his duty to MBMS and fully advocated her positions and represented her legal interests. Rule 1.14(a) RPC, Rule 407, SCACR state that "[w]hen a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of . . . mental impairment . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

In his representation of MBMS, Polk determined that MBMS did not want to contest the legal action temporarily appointing her daughter, PS, as her legal guardian and conservator. Polk did not object to this process continuing because having PS appointed as MBMS's permanent guardian and permanent conservator was MBMS's wish. Polk supported MBMS' wish to have PS appointed her permanent guardian and permanent conservator as any lawyer would in the normal course of the client-lawyer relationship.

C. The procedural due process arguments of RJT and RTT were frivolous.

The procedural due process principle requiring notice does not prohibit court rules providing for waiver of insufficiency of service of process. If they did, Rule 12(h) SCRCP would be unconstitutional as violating the due process principle requiring notice. In so many ways, MBMS' right to insist upon personal service was waived, and the arguments of RJT and RTT to the contrary were frivolous.

IX. A REASONABLE ATTORNEY WOULD CONCLUDE THAT THE ATTORNEY-CLIENT PRIVILEGE DID NOT SUPPORT THE REFUSAL BY RTT AND RJT TO PRODUCE THE WILL AND THAT ANY ATTORNEY-CLIENT PRIVILEGE CLAIM WAS FRIVOLOUS.

"The attorney-client privilege protects against disclosure of confidential communications by a client to his or her attorney." Crawford v. Henderson, 356 S.C. 389, 395, 589 S.E.2d 204, 207, 589 S.E.2d 204, 207 (Ct. App. 2003) (citing State v. Owens, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992)). "The (attorney-client) privilege is based upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures by the client within the relationship is maintained." State v. Doster, 276 S.C. 647, 650-651, 284 S.E.2d 218, 219 (1981) (parenthetical added). However, like other privileges, the attorney-client privilege is subject to waiver. South Carolina State Highway Dep't v. Booker, 260 S.C. 245, 254, 195 S.E.2d 615, 620 (1973).

'The attorney-client privilege is owned by the client, and, therefore, can be waived by the client." Floyd v. Floyd, 365 S.C. 56, 86, 615 S.E.2d 465, 482 (Ct. App. 2005) (citing Booker, 260 S.C. at 254, 196 S.E.2d at 620). "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct. App. 1984) (citing Duplan Corp. v Deering Milliken, Inc., 397 F. Supp. 1146 (D.S.C. 1975); U.S. v. Jones, 696 F.2d 1069 (4th Cir. 1982).

Unless he is prepared to admit that he violated Rule 1.6 RPC, Rule 407, SCACR by revealing the Will to PS during MBMS's lifetime, RJT must admit that his disclosure of the Will to PS before MBMS's death was authorized by MBMS. The disclosure of the Will to PS as

authorized by MBMS waived the attorney-client privilege that might otherwise have protected the Will from disclosure. Disclosure of the Will to PS waived the attorney-client privilege, and RTT and RJT were well aware of the facts supporting this waiver. A reasonable attorney possessing the knowledge of RTT and RJT about the inter vivos disclosure of MBMS's Will to PS would conclude that that disclosure of the Will to PS waived MBMS's attorney-client privilege to prevent disclosure of the Will and that any argument to the contrary is frivolous.

X. NOTICE AND GROUNDS FOR APPEAL CAN BE A BASIS FOR AWARDING SANCTIONS

According to Rule 74 SCRCP, which deals with appeals to the circuit court, states that "proceedings in the circuit court shall be in accordance with these rules (the South Carolina Rules of Civil Procedure)" (parenthetical added). Rule 11 applies to the Notice of Appeal and Grounds for Appeal filed by RJT and RTT in the circuit court.

CONCLUSION

For the foregoing reasons, this Court should deny the Motion to Reconsider the Sanctions Order that was made by RJT and RTT.

Respectfully Submitted,

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Columbia, South Carolina
March 9, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE PROBATE COURT
Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

ROBERT J. THOMAS AND ROGERS TOWNSEND & THOMAS, PC'S REPLY TO PETITIONER'S MEMORANDUM IN OPPOSITION TO RULE 59(e) MOTION TO RECONSIDER ORDER GRANTING MOTION FOR SANCTIONS

TO THE COURT AND COUNSEL OF RECORD:

Robert J. Thomas and Rogers Townsend & Thomas, PC ("RTT") submit this Reply to Petitioner's Memorandum in Opposition to RTT's Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions.

Argument

I. To the extent Petitioner's Memorandum is duplicative or non-responsive to RTT's Memorandum in Support of Rule 59(e) Motion to Reconsider, no reply is necessary and RTT directs the Court to its previously filed Memorandum.

Many of the arguments in which Petitioner advances in her Memorandum are duplicated verbatim from Petitioner's Memorandum in Support of Motion for Sanctions dated May 19, 2014. Most notably, this includes Petitioner's reply to RTT's Rule 59(e) ground that RTT's objection to the Court's Orders was not frivolous, which is the crux of the issue before this

Court. (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., pp. 11-14; Pet'r Mem. in Supp. of Mot. for Sanctions, pp. 9-13). Petitioner's remaining arguments are procedural. To the extent Petitioner's arguments are duplicative of any prior memorandum Petitioner filed with this Court, RTT already addressed and fully briefed those issues in its previous Memorandum in Support of RTT's Rule 59(e) Motion to Reconsider. In an effort to avoid further duplicity, RTT directs this Court to its Memorandum and incorporates the same by reference in reply.

Likewise, RTT need not respond to the facts and issues raised in RTT's Memorandum in Support of Rule 59(e) Motion that Petitioner failed to address or otherwise reply to in her Memorandum. Those facts and issues are generally summarized as follows:

- There are no facts in the record to support an "emergency appointment" of the Temporary Conservator and Temporary Guardian.
- No hearing was held within 30 days after the date of the appointment, May 21, 2011, of a Temporary Guardian and Temporary Conservator, as mandated by S.C. Code Ann. § 63-5-310(D).
- Ms. Saine filed the petitions in the guardianship and conservatorship actions in her capacity as attorney-in-fact, and then purported to accept service on Ms. Sjoberg's behalf in that same capacity, despite the fact that the Durable Power of Attorney Ms. Saine relied upon did not give her the power to accept service of a lawsuit or defend on Ms. Sjoberg's behalf.
- Ms. Saine's authority as Temporary Guardian and Temporary Conservator expired months before the Court's first Order for Release of Client Documents.
- The Proof and Delivery filed by Ms. Caughman did not relate to notice of the initial Guardianship or Conservatorship hearing.
- RTT submitted its first and second memoranda in support of its Motion to Reconsider Order for Release of Client Documents at the request of the Court.
- RTT did not have access to the Court's file before it filed its Motion to Reconsider and Memorandum in Support.
- There is nothing in the record to indicate that the Conservator requested Ms. Sjoberg's estate documents for a valid purpose or that there was a time sensitive reason to obtain the documents.
- The law regarding the privileged nature of a living person's estate planning documents and will is complex and undeveloped.
- The Court failed to consider additional factors as mandated by the Act, including previous violations of the Act and Rule 11 and the complexity of the law relating to the issues before the Court.
- The filing and signing of the Notice of Appeal and the Grounds for appeal are not subject to sanctions under the Act.

- Attorneys' fees are not appropriate because Petitioner is not a prevailing party. Petitioner did not prevail on any motion or pleading.

II. The additional arguments advanced by Petitioner that are responsive to RTT's Memorandum and are not duplicative fail as a matter of law.

In regard to the points that Petitioner advances in her Memorandum that are apparently in response to RTT's Memorandum and that are not identical to those already raised in her Memorandum in Support of Motion for Sanctions, those arguments are procedural in nature. Even if this Court were to accept those arguments, sanctions remain inappropriate because RTT did not act unreasonably in challenging the Release Orders. Nevertheless, Petitioner's remaining arguments fail as a matter of law because her Motion for Sanctions was procedurally defective and could not be properly considered by this Court. RTT summarizes and replies to Petitioner's additional arguments as follows:

A. Rule 59(e) Standard

Without analysis, Petitioner generally cites the purposes of a Rule 59(e) Motion and the scope of issues that can be raised under the same. (Pet'r Mem. in Opp'n to RTT's Rule 59(e) Mot., p.4). However, the record does not indicate, and Petitioner does not contend, that any of RTT's Rule 59(e) grounds raised in its Memorandum in Support are not appropriately before this Court. Therefore, Petitioner raises no issues in that section of her Memorandum that require a reply.

B. Standing of Petitioner to Bring Motion for Sanctions

Apparently in response to RTT's ground that Petitioner lacked standing to file the Motion for Sanctions, Petitioner argues (1) RTT's position is "hyper technical"; (2) Petitioner had authority to pursue sanctions as Personal Representative; and (3) "any doubt as to the capacity in which [Petitioner] was pursing sanctions was fully resolved on service of [Petitioner's]

Memorandum in Support of Motion for Sanctions, in which [Petitioner] argued that she had the capacity to pursue sanctions as Personal Representative of her mother's Estate." (Pet'r Mem. in Opp'n to RTT's Rule 59(e) Mot., p. 7).

In regard to Petitioner's contention that RTT's standing argument is "hyper-technical," Petitioner fails to apprehend that RTT is entitled to be sued by the correct party. If a hyper-technically incorrect party is permitted to sue RTT, RTT runs the risk of then defending the same action against the hyper-technically correct party.

Petitioner also fails to acknowledge the language of Rule 17, which requires that "[e]very action ***shall be*** prosecuted ***in the name of*** the real party in interest." SCRCP Rule 17 (emphasis added). Petitioner admits she had authority to sue as Personal Representative, and she admits that she was aware of this at the time she filed her Memorandum in Support of Motion for Sanctions, yet Petitioner offers no explanation as to why she failed to do so. Petitioner wants this court to ignore that fact and dismiss RTT's argument by characterizing it as "hyper-technical" despite (1) her being aware of Rule 17, (2) RTT's objection on the basis of standing, and (3) Petitioner's acknowledgment that her appropriate capacity to bring the Motion was as Personal Representative. Simply because Petitioner could have brought the motion as Personal Representative does not cure the procedural defect because she actually, and willfully, failed to do so.

C. Subject Matter Jurisdiction over Sanctions Proceedings

In response to RTT's ground that Petitioner's Motion for Sanctions is untimely, Petitioner (1) provides a summary of In re Beard and Pittman; (2) argues the judgment of the Probate Court did not become final until the date the Guardian *ad litem* received notice of the Circuit Court's Order dismissing the appeal as moot; (3) generally avers without any legal authority that RTT's appeal was interlocutory because no permanent guardian or conservator

had been appointed for Ms. Sjoberg; and (4) argues that Petitioner's claim pursuant to Rule 11was timely even if Petitioner's claim under the Act was not. There is simply no case law in the country that supports Petitioner's arguments.

As a threshold matter, Petitioner misconstrues the law regarding final judgments, and Petitioner's Motion for Sanctions pursuant to the Act was untimely. Petitioner cites and summarizes In re Beard and Pittman, but does not offer any explanation as to how these two cases support the notion that Petitioner's Motion was timely. In fact, those cases do just the opposite.

Petitioner is correct in stating that "[b]oth Pittman and In re Beard [sic] analogize SCFCPSA motions for sanctions to the post-trial motion to alter or amend under Rule 59(e) SCRCP." (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., p. 8). In Pittman, the defendant filed a motion for sanctions over two months after the court granted defendant's motion for summary judgment. The Court of Appeals held the defendant's motion was untimely because it was not filed within ten (10) days of the judgment, and the trial judge no longer had jurisdiction over the case. Pittman v. Republic Leasing Co., Inc., 351 S.C. 429, 432 (S.C. Ct. App. 2002). Likewise, in In re Beard, Watkins, the plaintiff in the underlying action, attempted to amend his Complaint to add a cause of action for legal malpractice and breach of fiduciary duty against Beard. In re Beard, 359 S.C. 351, 355-356 (S.C. Ct. App. 2004). Claiming Watkins's motion to amend was frivolous, Beard filed a motion for sanctions "almost one full year after the trial court denied Watkins's motion to amend his complaint to include Beard as a defendant." Id. at 359. The Court of Appeals dismissed Beard's motion under the Act as untimely for that reason. Id.

Similarly, the Probate Court no longer had jurisdiction to hear Petitioner's Motion for Sanctions after December 14, 2012, ten (10) days after this Court denied RTT's Motion to

Reconsider the Orders for Release of Client Files. Petitioner misapprehends what constitutes a "final judgment" in this matter. The Court's Orders to release Ms. Sjoberg's estate documents were directed to RTT, a non-party. RTT objected on the basis of the legality of the Orders and privilege. The December 4, 2012 Order Denying RTT's Motion to Reconsider the Orders for Release of Client Documents was a final judgment as to RTT, and Petitioner's ten (10) day deadline began to run on that date.

Because appeals are only available where there is a final judgment, RTT could appeal the Release Orders. RTT's appeal was not interlocutory, which is emphasized by the fact that the Circuit Court accepted the appeal and did not dismiss it on that ground. Moreover, Petitioner did not challenged RTT's appeal on the ground that it was interlocutory, and Petitioner waived that argument by not raising it during the appeal and cannot do so now. Notably, Petitioner also avoids acknowledging Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138 (2014), in which the Supreme Court held that a notice of appeal does not deprive the lower court of jurisdiction to consider a timely post-trial motion.

Finally, Petitioner's claim pursuant to Rule 11 is also untimely. Rule 11 does not set forth a time limit for filing a Motion for Sanctions within the Rule itself, and no appellate court in South Carolina has determined what the appropriate deadline should be. However, a motion for sanctions filed one year and nineteen days after this Court entered a final order on the matter is unreasonable and untimely as a matter of law.

In both Pittman and In re Beard, the appellants only sought to challenge the appropriateness of the timing for sanctions under the Act, which the Court of Appeals held was untimely in both cases. Pittman does not include any discussion regarding a motion under Rule 11. And in In re Beard, the timing to file a motion for sanctions under Rule 11 was not a ground

for appeal before the court, so the court instead ruled on the merits of the Rule 11 motion. Likewise, in Russell, a case decided two years after In re Beard and cited by Petitioner, the Court of Appeals expressly declined to resolve this issue because it was not before the court:

> We do distinguish between the FCPSA and the Rule 11 sanctions. There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment. *See Ex parte Beard,* 359 S.C. at 359–60, 597 S.E.2d at 839 (holding that a motion for sanctions pursuant to the FCPSA must be filed within ten days of notice of entry of judgment but not a motion under Rule 11). **As a result, we decline to address what time limit is proper with regard to the Rule 11 sanctions because the issue is not before us.** However, since the motion made pursuant the FCPSA is proper it is only logical that the Rule 11 motion was timely according to *Ex parte Beard. See The Father v. South Carolina Dep't of Soc. Servs.,* 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001) **(stating that criteria for Rule 11 sanctions are essentially the same as those for sanctions under the FCPSA).**

Russell v. Wachovia Bank, N.A., 370 S.C. 5, 20, FN 11 (2006) (emphasis added).

However, the 4th Circuit Court of Appeals has held that a delay of 14 months in moving for sanctions is unacceptable, even where the opponent of sanctions has not alleged prejudice or lack of notice. Hunter v. Earthgrains Co. Bakery, 281 F.3d 144 (4th Cir. 2002). Moreover, other states that have addressed this issue apply a reasonableness test. For example, the North Carolina Court of Appeals held that although Rule 11 does not specify a time limit for filing a sanctions motion, "a party should make a Rule 11 motion within a reasonable time after he discovers an alleged impropriety." Griffin v. Sweet, 136 N.C. Ct. App. 762, 765, 525 S.E.2d 504, 506 (2000), citing Rice v. Danas, Inc., 132 N.C. Ct. App. 736 (1999) and Renner v. Hawk, 125 N.C. Ct. App. 483, 491 (1997). It defies reason to argue that a person may be subject to sanctions under Rule 11 indefinitely. Naturally, there must be some limitation.

Here, Petitioner waited to file her motion over one year after this Court entered a final order denying RTT's Motion to Reconsider. If the party seeking sanctions has two different

times in which to bring a claim relating to the exact same conduct, each claim would be subject to two separate appeals. RTT does not take the extreme position that Petitioner's deadline to file her Motion pursuant to Rule 11 was also ten (10) days as required for all other post-trial motions; however, RTT does contend that the motion must be made within a reasonable time, and over a year after Petitioner was on notice of all of the relevant facts that form the basis for her Motion is unreasonable.

D. Due Process

After a lengthy discussion regarding waiver of personal service verbatim to that contained in Petitioner's Motion for Sanctions, Petitioner asserted that RTT's Due Process arguments were frivolous because personal service was waived by Ms. Sjoberg.

Petitioner fails to acknowledge that an incompetent person cannot hire an attorney who can waive personal service. Nor can an incompetent person waive personal service herself. RTT fully briefed the Court on the reasons why this is the case, and included a summary of an analogous opinion from the Third Circuit Court of Appeals in In re Nash, 799 So.2d 1271 (3d. Cir. 2001). (RTT's Mem. in Supp. of Rule 59(e) Mot. to Recons., p. 17). Ms. Sjoberg was never personally served, and RTT's argument regarding Due Process is not frivolous for that reason.

E. Applicability of Rule 11 and the Act to Notice of Appeal and Grounds for Appeal

Petitioner is silent as to the applicability of Notice and Grounds for Appeal to motions for sanctions pursuant to the Act. And without analysis, Petitioner concludes Rule 11 applies to the Notice of Appeal and Grounds for Appeal. (Pet'r Mem. in Opp'n to Rule 59(e) Mot. to Recons., p. 16). Although Petitioner has never supported that conclusion with any legal authority, in reply, RTT reincorporates its previous argument found in its Motion in Opposition to Motion for Sanctions on pages 28-29 as follows:

Rule 11, like all the South Carolina Rules of Civil Procedure, is applicable to matters in "the Court of Common Pleas and . . . all South Carolina courts in suits of a civil nature whether cognizable as cases at law or in equity, subject to certain exceptions contained in Rule 81. Rule 81 provides the rules shall apply to every trial court of civil jurisdiction within the state and shall apply insofar as practicable in magistrates' courts, probate courts and family courts to the extent they are not inconsistent with the statutes and rules governing those courts." Karen L. Huelson, A Snapshot of the South Carolina Court System, S.C. Law., November 2012, at 34, 38 (citing Rule 1, SCRCP and Rule 81, SCRCP). Conversely, "[t]he S.C. Appellate Court Rules . . . specify the procedures for appeals, petitions and motions before the Supreme Court and the Court of Appeals. They also contain rules governing the conduct, discipline, continuing legal education and other obligations of attorneys and judges in South Carolina, as well as the admission of attorneys to the practice of law." Id. at 34.

"Rule 74 [of the South Carolina Rules of Civil Procedure] makes clear that appeals from inferior courts or administrative agencies are governed by statutes providing for such appeals." Appeals from the probate court to the circuit court are governed by the probate code. See, generally, S.C. Code Ann. § 62-1-308 (Supp. 2012). The Probate Code does not provide for sanctions related to appeals.

Because the Court lacks any authority under the Act or Rule 11 to issue sanctions relating to appeals, the Court should have denied Petitioner's Motion to the extent it sought sanctions for the filing and signing of the Notice of Appeal and the Grounds for Appeal. Further, even if the Act and Rule 11 allowed sanctions for frivolous appeals, the power to sanction a party for conduct related to an appeal would lie in the appellate court, not the trial court. That rule applies to all filings addressed to the appellate court, including any notice and grounds for appeal, writs,

whether for mandamus or certiorari, or otherwise. To find any other way would allow a trial court to make a decision regarding whether or not it is frivolous for a party to challenge the trial court's own order on appeal. As such, this Court lacked subject matter jurisdiction to consider whether the appeal, or any of the filings associated therewith, was frivolous.

Conclusion

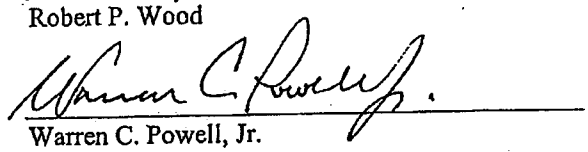
Wherefore, RTT respectfully requests the Court reconsider and rescind its Order Granting Motion for Sanctions dated January 2, 2015. The undersigned affirms, pursuant to SCRCP 11(a), that consultation with opposing counsel is not required.

By signing this Memorandum in Reply to Petitioner's Memorandum in Opposition to RTT's Rule 59(e) Motion to Reconsider Order Granting Sanctions, we certify that we have read this Memorandum, that to the best of our knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

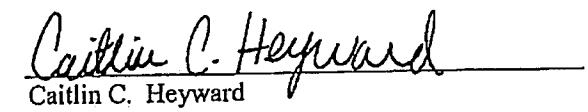
Respectfully submitted,



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Columbia, SC
March 17, 2015

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF RICHLAND	)	Case No. 2011-GC-40-00047
	)	Case No. 2011-GC-40-00048
IN RE: Mary Beth Moore Sjoberg	)	
Paula S. Saine, as the Attorney-In-Fact For Mary Beth Moore Sjoberg, Principal and as the Daughter of Mary Beth Moore Sjoberg	)	Certificate of Service
Petitioner,	)	
v.	)	
Mary Beth Moore Sjoberg, and alleged incapacitated person, A. Bea Hightower, as Guardian Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,	)	
Respondents.	)	

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Robert J. Thomas and Rogers Townsend & Thomas, PC, do hereby certify that on this 27th day of February 2014, I served ***Robert J. Thomas and Rogers Townsend & Thomas, PC's Reply to Petitioner's Memorandum in Opposition to Rule 59(e) Motion to Reconsider Order Granting Motion for Sanctions*** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Rite Bragg Caughman, Esquire
Adams & Reese, L.L.P.
Post Office Box 2285
Columbia, South Carolina 29202

Arthur K. Aiken, Esquire
Aiken & Hightower, P.A.
Suite 201
2231 Devine Street
Columbia, South Carolina 29205

Laura J. Fetner

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

EX PARTE: Robert J. Thomas and Rogers Townsend & Thomas, PC, Appellants

IN RE: Mary Beth Moore Sjoberg

Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg,

Petitioner,

vs.

Mary Beth Moore Sjoberg, an alleged incapacitated person, A. Bea Hightower, as Guardian ad Litem for Mary Beth Moore Sjoberg, and Paula S. Saine,

Respondents.

Of whom, Paula S. Saine, as the Attorney-in-Fact for Mary Beth Moore Sjoberg, Principal, and as the Daughter of Mary Beth Moore Sjoberg is Respondent

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
APPEAL FROM THE PROBATE COURT

Case No. 2015-CP-40-04376

Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

ORDER DENYING ROBERT J. THOMAS AND ROGERS RULE 59(e) MOTION TO RECONSIDER

RICHLAND COUNTY
FILED
2016 SEP 19 AM 9:19
JEANETTE W. McBRIDE
C.C.P. & G.S.

RECEIVED
OCT 24 2016
SC Court of Appeals

This matter comes before the Court by way of Appellants' Motion to Alter or Amend the Judgment pursuant to Rule 59(e), SCRCP. Specifically, Appellants ask this Court to reconsider its Order Denying Appellants' Appeal and affirming the rulings of Judge Belton and the sanction against Appellants dated April 21, 2016 and filed April 22, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

SCANNED

Accordingly, this Court hereby **DENIES** Appellants' Motion under Rule 59(e), SCRCP, to reconsider this Court's Order that was filed April 22, 2016. Furthermore, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
September 16 2016

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

SCANNED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4004376

RECEIVED
OCT 24 2016
SC Court of Appeals

Paula S Saine	Mary Beth Moore Sjoberg
Mary Beth Moore Sjoberg	A Bea Hightower
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____ | Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Voluntary Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

JEANETTE C. W. McBRIDE
2016 SEP 19 AM 9:45
RICHLAND COUNTY FILED

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2126 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Warren C. Powell Jr.
Caitlin Creswick Heyward
Arthur Kerr Aiken

Robert P. Wood
Mary Lucille Dinkins

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

CERTIFICATE OF SERVICE BY MAIL
Case No. 2015-CP-40-04376

Case No. 2011-GC-40-00047
Case No. 2011-GC-40-00048

I, an employee with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing documents upon counsel of record by hand delivery and electronic mail, on May 15, 2017, at the following address:

Document:

JOINT MOTION TO DISMISS APPEAL AND TO VACATE ORDERS

Counsel Served:

Art Aiken, Esquire
2231 Devine Street
Columbia, SC 29205

art@aikenandhightower.com

RECEIVED
MAY 15 2017
SC Court of Appeals

Sheri H. McClendon
Senior Litigation Paralegal