

**THE STATE OF SOUTH CAROLINA
In The Court Of Appeals**

**APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas**

J. Michael Baxley, Circuit Court Judge

**CASE NO. 2010-CP-16-0332
(Tracking Number 2011197671)**

Pee Dee Health Care, P.A. Appellant,

v.

Estate of Hugh S. Thompson Respondent.

**RESPONDENT'S REPLY IN SUPPORT OF
RESPONDENT'S MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY
WITH RULE 210 SCACR
OR, IN THE ALTERNATIVE,
FOR EXPEDITED COMPLIANCE WITH RULE 210 AND
FOR ADDITIONAL TIME TO FILE RESPONDENT'S FINAL BRIEF**

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P. O. Box 507
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Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

RECEIVED
NOV 14 2012
SOUTH CAROLINA
COURT OF APPEALS

THE FAILURE TO COMPLY WITH SCACR 210

Following the Rules would have been easy. The Respondent designated matters to be included in the Record on Appeal – matters cited to in the Respondent’s initial brief.¹ But designated matters were either not included – or – were included out of the order specified by the Rule (SCACR 210(c)) and without needed indexing and without the context required by Rule 210² – again, the Rules make it clear how a Record on Appeal is to be completed and simply

¹ Both Parties have filed and served initial briefs in this appeal together with Designations of Matter for the Record on Appeal. The Respondent’s Initial Brief and Designation in this appeal were timely filed and served on April 11, 2012 triggering a May 11th due date for the Record on Appeal pursuant to Rule 210(a) of the SCACR. The Appellant, however, failed to file and serve a Record on Appeal in this particular appeal by May 11th. It is now almost 6 months later and still no Record on Appeal. Thus, Respondent has been unable to prepare and file its final brief.

² In a clarifying letter transmitted October 31, 2012, Respondent’s counsel identified those documents not included in the Record filed October 12, 2012, and those documents not provided in the proper context. That letter (Exhibit A hereto) provided, in part:

Jay James and I are in receipt of Tony’s e-mail dated yesterday, October 30, 2012 at 10:02 a.m. We appreciate any effort to try and resolve the issues regarding the record on appeal. Indeed, this is why our motion asking for compliance with Rule 210 of the SCACR offers to consent to a minor supplement to the record as opposed to a complete re-make.

As you know, there are three particular exhibits identified by our motion for Rule 210 compliance. While it is true that the content of the first two exhibits identified by our motion are reproduced in your record on appeal, they are not indexed, presented, or labeled in the context cited by our Initial Brief. For example, our Initial Brief cites to Exhibit HH of the Plaintiff’s Response to the Motion to Disqualify. This same document is in your present record on appeal at page 803, but, not as a Plaintiff’s exhibit but rather as an exhibit to the Defendant’s response to the Motion for Reconsideration, a pleading submitted much later in time. While this context may not seem important, it is; our Brief intentionally cites to the document as submitted by the Plaintiff because the context of the Plaintiff’s submission of the document is important to our argument.

The second item identified in our SCACR 210 Motion is Exhibit V to a specific pleading (Pee Dee Health Care’s Return to Motion to Disqualify) which gives context to the relevance of the exhibit and it is important to our argument. While documents comprising the content of this exhibit do appear to be reproduced in your Record on Appeal, there is no way to tell from the index or the documents itself that they are a part of Exhibit V as referenced in our Brief. The Court would need to take our word for it that these pages are part of an exhibit submitted by the adverse party – following the Rule avoids such a dilemma.

* * *

The third exhibit identified in our Motion for Rule 210 compliance is Exhibit B to the Motion to Disqualify. You have included the Motion itself and the reference to this exhibit is on page 718 of your present record on appeal. As you can see, it references

following the Rules would have been easy. The Appellant, however, did not follow the Rules and unfortunately, like everything in this litigation, it has not been easy.

Respondent has been willing to consent to a minor supplement to the record as opposed to a complete re-make. This cooperative effort was first noted in the motion itself and then in an explanatory letter from Respondent's counsel on October 31, 2012 (Exhibit A). In Reply to that letter, Appellant's counsel essentially attempted to shift the responsibility of preparing a Record in compliance with the Rule to the Respondent (Exhibit B) – a burden that Respondent refused to assume in a November 1, 2012 letter from counsel (Exhibit C)³ and again refused to assume in an e-mail reply sent Saturday, November 3, 2012. (Exhibit D). Appellant had attempted the same shift of responsibilities in an earlier appeal without success. (See Exhibit E).

Obviously it is not Respondent's prerogative to specify what, if anything less than complete compliance with the Rules, would satisfy the Court. The Court is not dealing with a *pro se* litigant or prisoner – the continuing contact person is Appellant's CEO and general counsel – who finished law school some 25 or more years ago; thus, it is not unreasonable for the Court to require compliance with its Rules.

a Medicare Enrollment Application executed by you – these were documents found in other litigation on file at the Florence County Clerk of Court's office. They were submitted as an exhibit to the motion to demonstrate your position with the plaintiff entity. Our Brief cites these documents to put our arguments in context and show the entirety of the record that was before Judge Baxley when he made his disqualification ruling. While your e-mail this morning refers us to pages 491, 588, and 641 of the existing Record on Appeal, these are not Exhibit B to the Motion to Disqualify. Again, we will be happy to consent to a simple supplemental record that adds this Exhibit and addresses the context of the two other Exhibits cited by our Initial Brief.

³ The November 1, 2012 letter of Respondent's counsel also denies that Respondent's counsel had "acknowledged by e-mail, or otherwise, that the ROA was complete prior to its filing on October 12." Appellant's counsel not only tried to shift responsibility of the Record on Appeal to Respondent, he made the false assertion that Respondent's counsel had accepted that responsibility and "pre-approved" his deficient Record on Appeal despite their inability to finalize their initial Brief because of its deficiencies.

APPELLANT'S REQUEST FOR EXTRAORDINARY RELIEF

In response to the Respondent's simple motion seeking a compliant Record on Appeal, the Appellant gratuitously asks this Court for what the Appellant calls "extraordinary relief." Essentially, Appellant ask this Court to take its' loss on the merits (adverse summary judgment) (Tracking Number 2011203391) and turn it into a win by "voiding" everything Respondent's counsel has done in this matter because of alleged ethical violations – allegations not admitted as falsely claimed in Appellant's current motion response, but allegations consistently denied.

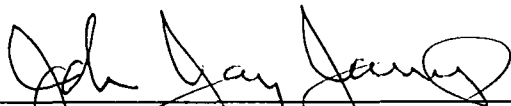
This dead horse has been kicked and kicked and kicked – in this Court, in the trial Court, and with the Office of Disciplinary Counsel. The trial court did not disqualify Respondent's counsel despite the same accusations, this Court has refused to disqualify Respondent's counsel (order of this Court dated October 6, 2011), and Appellant's filing of a complaint with the Office of Disciplinary Counsel has been dismissed with finality (Exhibit F) – but still Appellant persist in repeating these frivolous and threatening tactics. ***Indeed, as a result of such tactics in the trial court, the trial judge has already indicated his intent to send Appellant's counsel to jail for contempt for 30 days. (See Exhibit G).***

CONCLUSION

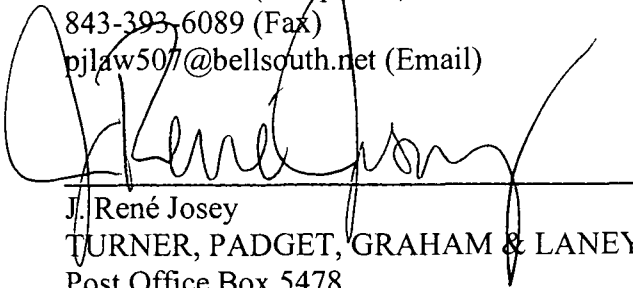
The failure to include all the material designated by the Respondent renders preparation of a final brief impossible and unfairly prejudices the Respondent's presentation of its position. This is not a case of the Respondent deciding that it wishes to supplement the record under Rule 212 with something not previously designated; this is a case of the Appellant simply failing to include everything listed by the Respondent's in its designation. The delay caused by this error is simply the latest iteration of a compendium of errors exponentially raising the cost of litigation to the parties and the Court.

The trial court has issued summary judgment to Respondent and that decision is already fully briefed before this Court (Tracking Number 2011203391) and awaiting disposition -- which could moot this matter as well as a third pending appeal (Tracking Number 2011185767). Respondent strongly urges this Court to proceed and decide the dispositive third appeal – with or without oral argument – as this litigation, with its multiple appeals and numerous motions (trial and appellate), has already proven far more costly than warranted.

November 9, 2012



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843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

EXHIBIT

A

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

October 31, 2012

SENT VIA U.S. MAIL, FAX AND E-MAIL

Tony Ray Megna, Esquire
Ben R. Matthews, Esquire
Matthews & Megna
3400 West Avenue
Columbia, SC 29203

Re: Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
This Letter Relates to Appeal Tracking Number 2011197671
TPGL File No.: 10667.101

Dear Tony and Ben:

Jay James and I are in receipt of Tony's e-mail dated yesterday, October 30, 2012 at 10:02 a.m. We appreciate any effort to try and resolve the issues regarding the record on appeal. Indeed, this is why our motion asking for compliance with Rule 210 of the SCACR offers to consent to a minor supplement to the record as opposed to a complete re-make.

As you know, there are three particular exhibits identified by our motion for Rule 210 compliance. While it is true that the content of the first two exhibits identified by our motion are reproduced in your record on appeal, they are not indexed, presented, or labeled in the context cited by our Initial Brief.

For example, our Initial Brief cites to Exhibit HH of the Plaintiff's Response to the Motion to Disqualify. This same document is in your present record on appeal at page 803, but, not as a Plaintiff's exhibit but rather as an exhibit to the Defendant's response to the Motion for Reconsideration, a pleading submitted much later in time. While this context may not seem important, it is; our Brief intentionally cites to the document as submitted by the Plaintiff because the context of the Plaintiff's submission of the document is important to our argument.

The second item identified in our SCACR 210 Motion is Exhibit V to a specific pleading (Pee Dee Health Care's Return to Motion to Disqualify) which gives context to the relevance of the exhibit and it is important to our argument. While documents comprising the content of this exhibit do appear to be reproduced in your Record on Appeal, there is no way to tell from the index or the documents itself that they are a part of Exhibit V as referenced in our Brief. The Court would need to take our word for it that these pages are part of an exhibit submitted by the adverse party – following the Rule avoids such a dilemma.

BUSINESS • LITIGATION • SOLUTIONS

319 S. Irby Street (29501) • PO Box 5478 • Florence, SC 29502
Phone (843) 662-9008 • Fax (843) 667-0828 • turnerpadget.com

Tony Ray Megna, Esquire

October 31, 2012

Page 2

Perhaps these issues could be rectified by some supplemental index or supplemental acknowledgement that these pages do in fact make up the exhibit as cited in our Initial Brief. Without any guidance from the Court, however, it would seem a short supplement properly labeled and indexed would suffice. Obviously we can't speak to what might be acceptable to the Court other than strict compliance with the Rules.

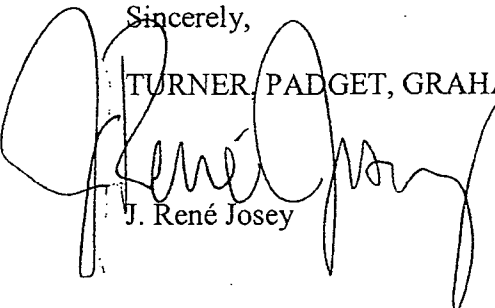
The third exhibit identified in our Motion for Rule 210 compliance is Exhibit B to the Motion to Disqualify. You have included the Motion itself and the reference to this exhibit is on page 718 of your present record on appeal. As you can see, it references a Medicare Enrollment Application executed by you – these were documents found in other litigation on file at the Florence County Clerk of Court's office. They were submitted as an exhibit to the motion to demonstrate your position with the plaintiff entity. Our Brief cites these documents to put our arguments in context and show the entirety of the record that was before Judge Baxley when he made his disqualification ruling. While your e-mail this morning refers us to pages 491, 588, and 641 of the existing Record on Appeal, these are not Exhibit B to the Motion to Disqualify. Again, we will be happy to consent to a simple supplemental record that adds this Exhibit and addresses the context of the two other Exhibits cited by our Initial Brief.

As an additional observation, I also note that the index to the existing Record On Appeal (pages iii to v) refers to various numbered designations of the Respondent (#10, #12, #23, #11, and #9); those numbered designations are apparently from the summary judgment appeal (tracking number 2011203391) and not this appeal. While confusing, we do not suggest any particular remedy is needed for this problem.

Assuming the Court approves something other than strict compliance with the Rules, we believe that our suggested manner of presentation of the omitted materials is the most expeditious and cost effective resolution to the issues. Strict compliance would require inclusion of all exhibits to the Defendant's Motion and the Plaintiff's Return.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.



J. René Josey

JRJ:vlb

Cc: Jay James, Esquire

EXHIBIT

B

Josey, J. Rene

From: Tony R. Megna <tmegna@gmail.com>
Sent: Wednesday, October 31, 2012 4:46 PM
To: Josey, J. Rene
Cc: pjlaw507
Subject: Re: PDHC v. Estate of Thompson, Appeal 2011197671

Dear Rene and Jay:

We placed the documents under exhibits in accordance with the rules. Regardless, we would be pleased to acknowledge to the Court that the documents were cited in your original motion and were included by us in the Record on Appeal. Also, please provide [by email so we can review it quickly] Exhibit B to your motion to disqualify and we will be pleased to place it in a supplemental record if it is not already in the Record on Appeal. The record is large, and we will review the record once you send us the specific document. Apparently the exhibit we have identified differs from the one you have identified. I apologize in advance if we were incorrect.

In light of Rule 212, it is unlikely the Court will object to our agreements in this regard, particularly as Jay, I believe, acknowledged by email to our office that the record was complete prior to its' October filing.

We sincerely appreciate your assistance and cooperation in insuring the record is sufficient for the court to make an informed decision.

Again, please note our continuing objections to your representation of the Respondent because of the concurrent representation violations of Rule 1.7(b), and more specifically Rule 1.7(b)(4).

Again, many thanks for your insights and assistance,

Regards, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

This message is intended for the use of the person or entity to which it is addressed and may contain information, including legal and/or health information, that is privileged, confidential, and the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is STRICTLY PROHIBITED. If you have received this in error, please notify us immediately and destroy the related message.

Thank you.

On Wed, Oct 31, 2012 at 2:50 PM, Josey, J. Rene <JJosey@turnerpadget.com> wrote:

- > Please see the attached letter responsive to your e-mail of yesterday.
- > The original is being mailed to you. We are trying to fax as well but
- > your fax number does not seem to be working.

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> _____
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> CIRCULAR 230 DISCLOSURE: To comply with Treasury Department
> regulations, we inform you that, unless otherwise expressly indicated,
> 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 (i) avoiding penalties that may be imposed
> under the Internal Revenue Code or any other applicable tax law, or
> (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.
> /..

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>

> **CONFIDENTIAL & PRIVILEGED:**

> Unless otherwise indicated or obvious from the nature of the above
> communication, the information contained herein may be an
> attorney-client privileged and confidential information/work product.
> The communication is intended for the use of the individual or entity
> named above. If the reader of this transmission is not the intended
> recipient, you are hereby notified that any dissemination,
> distribution or copying of this communication is strictly prohibited.

>
> If you have received this communication in error or are not sure
> whether it is privileged, please immediately notify us by return
> e-mail and destroy any copies, electronic, paper or otherwise, which
> you may have of this communication.

EXHIBIT

C

LAW OFFICE

PAULLING & JAMES, LLP

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DARLINGTON, S. C.

29540

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ALBERT L. JAMES, III
JOHN JAY JAMES, II

T. DUDLEY PAULLING
(1896 - 1973)
ALBERT L. JAMES, JR.

November 1, 2012

Mr. Tony R. Megna, Esquire
Mr. Benjamin R. Matthews, Esquire
Matthews and Megan, P.A.
3400 West Avenue
Columbia, South Carolina 29203

Dear Tony and Ben:

Subject to your obtaining the Court's approval, we are agreeable to a supplement to the ROA that (i) indexes Exhibits HH and V as Exhibits to the Return of PDHC to the Motion to Disqualify and (ii) indexes Exhibit B to our Motion to Disqualify, and (iii) provides copies of each document, properly labeled. We will provide to you Exhibit B if your records do not contain it.

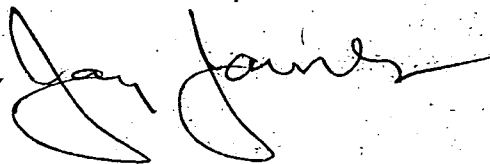
Neither René or I have acknowledged by e-mail, or otherwise, that the ROA was complete prior to its filing on October 12.

With kind regards, I am

Very truly yours,

PAULLING & JAMES

BY



JJJH: csa

cc: René Josey

EXHIBIT D

Josey, J. Rene

From: Josey, J. Rene
Sent: Saturday, November 03, 2012 10:22 AM
To: Tony R. Megna; ben@pdhc.com; benrusmat@gmail.com
Cc: Harriet; Jay James; Josey, J. Rene
Subject: Record on Appeal in Disqualification Appeal

Gentlemen,

As you know, we have filed a motion seeking compliance with Rule 210 of the SCACR with regard to the appeal from the disqualification order. That motion itself suggested possible methods to satisfy the Rule's purpose without completely starting from scratch – however we cannot speak for the Court and without Court direction, our motion for compliance and/or dismissal remains before the court. Our letters subsequent to the motion did not withdraw the motion but only sought to clarify our concerns and suggestions. We do not assume any responsibility for the preparation of the Record on Appeal and do not agree to the responsibilities suggested by your email below. At this point, we will await your filed response to the motion and any directives from the Court.

From: Tony R. Megna [<mailto:tmegna@gmail.com>]
Sent: Thursday, November 01, 2012 9:55 PM
To: Jay James
Cc: Harriet; Josey, J. Rene
Subject: Re: Letter

Jay-

Please provide me copies of the precise exhibits you want, they way you want them ordered, and the way you want them named. Even though the exhibits are already in the record, I have every intention of doing exactly as you wish. And I appreciate your efforts. I will be out of town tomorrow so I would appreciate you sending the documents and information by email in pdf format to Harriet Hobbs in my office, Her email address is included in this communication. All you have to do is reply to all. Once the documents are prepared, I will have her send them to you for final approval.

As a continuing caveat, please do not confuse our cooperation with the objections to your assistance to Turner Padgett in the continuing violation of Rule 1.7, etc. Our objections remain in all aspects.

Again, I sincerely appreciate your efforts and goodwill in completing this matter. Thank you.

With best regards, Tony

Thanks, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com

Office telephone: 803.799.1700

This message is intended for the use of the person or entity to which it is addressed and may contain information, including legal and/or health information, that is privileged, confidential, and the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is STRICTLY PROHIBITED. If you have received this in error, please notify us immediately and destroy the related message. Thank you.

On Thu, Nov 1, 2012 at 4:57 PM, Jay James <pjlaw507@bellsouth.net> wrote:

Tony and Ben:

The enclosed letter is being mailed to you today.

Jay

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, 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 (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

CONFIDENTIAL & PRIVILEGED: Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

EXHIBIT

E

Josey, J. Rene

From: Tony R. Megna <tmegna@gmail.com>
Sent: Thursday, April 05, 2012 7:28 PM
To: pjlaw507; Josey, J. Rene
Cc: Matthew Downtin
Subject: Part 1 - Proposed ROA PDHC v Thompson [Pages 1-250]
Attachments: Pages 1-250 proposed ROA 04122012.pdf

Gentlemen:

Please find attached pages 1-250 of the proposed ROA in the above-captioned matter. I will send you three additional emails that contain the remaining pages of the proposed ROA. Please let me know if you do not receive them. There will be four emails containing a total of 966 pages sent to you. Please let Wade Downtin of my office know if there are additional documents you wish to be included in the ROA or if you have other issues in regard to the proposed ROA. Please email him at "Matthew Downtin" waded@genesishqhc.org Please let him know by Tuesday, April 10, 2012 in order that we may get the ROA to the printers and filed with the Court.

Please note that the Plaintiff/Appellant continues to object to the representation of the Defendant/Respondent by either of you and/or anyone connected with your law firms because of matters including but not limited to the following:

- a. Mr. Josey's law firm actively represented the legal interests of the Plaintiff/Appellant both prior to and during his adverse legal representation of the Defendant/Respondent in this action without the consent of or consultation with the Plaintiff/Appellant.
- b. The ethical and legal issues associated with (a) Mr. Josey's law firm's abandonment of the Plaintiff in order to continue to represent the Defendant/Respondent in the above matter against the express wishes of the Plaintiff/Appellant, (b) the continuing misrepresentations to the court.
- d. The past and on-going damages to the Plaintiff/Appellant, and
- e. Mr. James' participation with Mr. Josey and others after he was made aware of the dual representation matters.

The Plaintiff/Appellant as well as its' officer, employees and agents request that you and your law firms take immediate action to discontinue your adverse representation of the Defendant/Respondent and mitigate the continuing damages to the Plaintiff/Appellant, its' officer, employees and agents, and that respect your legal and ethical duties of loyalty and fealty in all particulars and in all matters concerning the Plaintiff/Appellant, as well as its' officer, employees and agents.

Please forward the foregoing information to Companion Property and Casualty so that they are aware of the requests of the Plaintiff/Appellant as their insured.

Thank you for your attention to these matters.

Tony Megna

Please send all written correspondence to:

Tony R. Megna, Esquire

3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

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TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

April 9, 2012

Tony Ray Megna, Esquire
Matthews & Megna, Esquire
3400 West Avenue
Columbia, SC 29203

Benjamin R. Matthews, Esquire
Matthews & Megna, LLC
3400 West Avenue
Columbia, SC 29203

Re: Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
Civil Action No.: 2010-CP-16-0332
Tracking No.: 2011203391
TPGL File No.: 10667.101

Dear Mr. Megna and Mr. Matthews:

Last week, we received Mr. Megna's e-mails and those of Matthew Dowtin requesting that we review an electronic copy of the proposed Record on Appeal for accuracy and completeness. This is not an obligation placed on Respondent by the South Carolina Appellate Court Rules and we decline to accept this responsibility.

Pursuant to SCACR 209, your firm (both yourself and Mr. Matthews) and the Court of Appeals have been served with Respondent's Designation of Matter to Be Included in the Record on Appeal; an additional copy is enclosed in case yours has been misplaced. Because the 966 pages you have transmitted to us are without a paginated index of the type contemplated by SCACR 210(e) and are without individual bates-stamped pagination, even if we had the responsibility of previewing your proposed record on appeal, we could not begin to confirm whether you have included all of our designations as required by Rule 210(c) for which the Appellant (not Respondent) must certify total inclusion. SCACR 210(g).

We look forward to receipt of the Record on Appeal as required by SCACR 210 in the format required by SCACR 267.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:vib

Enclosure

Cc: Clerk of SC Court of Appeals
Jay James

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319 S. Irby Street (29501) • PO Box 5478 • Florence, SC 29502
Phone (843) 662-9008 • Fax (843) 667-0828 • turnerpadget.com

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332

(Appeal Tracking Number 2011203391)

Pee Dee Health Care, P.A. Appellant,

v.

Estate of Hugh S. Thompson Respondent.

DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Respondents propose the following to be included in the Record on Appeal (some of these may have also been designated by Appellant):

1. Summary Judgment Order, dated August 29, 2011 and filed September 1, 2011;
2. Order, dated September 28, 2011 and filed October 4, 2011, Dismissing Motion for Reconsideration of Summary Judgment;
3. Disqualification of Counsel Order, dated April 15, 2011;
4. Order, dated August 12, 2011, Denying Reconsideration of Disqualification;
5. Transcript of March 16, 2011, page 38;
6. Transcript of July 19, 2011, pages 3, 27, and 55;
7. Megna letter of July 8, 2011 to Trial Judge, filed the same date with Clerk;

8. Plaintiff's Response to Disqualification Motion dated March 11, 2011 (without exhibits – those needed are identified elsewhere in this designation);
9. Exhibit II to Plaintiff's Response to Disqualification Motion dated March 11, 2011 (May 28, 2004 Summary of Facts);
10. Exhibit A to Plaintiff's Response to Disqualification Motion dated March 11, 2011 (OMB Form No. 0938-0685 signed by Thompson on June 19, 1998 (that part entitled "Medicare Health Care Provider/Supplier Enrollment Application – General Application"));
11. Exhibit B to Plaintiff's Response to Disqualification Motion dated March 11, 2011 (OMB Form No. 0938-0685 apparently signed by Thompson on November 4, 1998 (only that section entitled "Medicare Federal Health Care Provider/Supplier Enrollment Application – Individual Reassignment of Benefits Application"));
12. Exhibit P to Plaintiff's Response to Disqualification Motion dated March 11, 2011 (e-mail between PDHC CEO Megna and PDHC employee Mark Matthews);
13. Exhibit U Plaintiff's Response to Disqualification Motion dated March 11, 2011 (e-mail from Megna to First Choice administrator Dean Banks);
14. Defendant's Motion to Amend Answer (motion only -- attached proposed Amended Answer not needed);
15. Plaintiff's Motion for Summary Judgment (Respondent only needs file stamped cover page, signature page, and Certificate of Mailing);
16. Exhibit Y to Plaintiff's Response to Disqualification Motion dated March 11, 2011 (Affidavit of James McInnis);
17. Defendant's Counter Motion for Summary Judgment filed May 20, 2011 (with *all* exhibits *including* Decision of Administrative Law Judge Dean Metry dated March 14, 2008);
18. Defendant's Reply in Support of Summary Judgment filed July 11, 2011 (with all exhibits);
19. Supplemental Exhibit Supporting Defendant's Counter Motion for Summary Judgment filed May 26, 2011 *together with attachment* (Medicare Appeals Council decision dated October 6, 2008);
20. Plaintiff's Complaint filed May 20, 2010;
21. Defendant's Answer filed June 17, 2010;

22. Letter of Ben Matthews dated October 28, 2011 together with Notice of Appeal from the Summary Judgment Order;
23. Judge Baxley Letter of August 12, 2011 Announcing Summary Judgment – Copied to Clerk of Court for file.


SCACR 209(C) CERTIFICATION

Pursuant to SCACR 209(c), we each certify that this designation contains no matter which is irrelevant to the appeal.

Florence, South Carolina

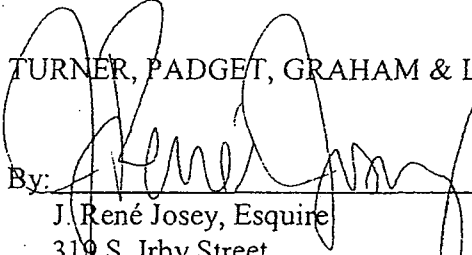
March 6, 2012

PAULLING AND JAMES, LLP

By: 

John Jay James, II, Esquire
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
Email: pjlaw507@bellsouth.net

TURNER, PADGET, GRAHAM & LANEY, P. A.

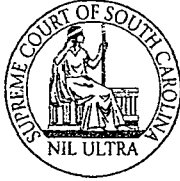
By: 

J. René Josey, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
(843) 667-0828 fax
Email: rjosey@turnerpadget.com

ATTORNEYS FOR THE RESPONDENT

EXHIBIT

F



The Supreme Court of South Carolina
COMMISSION ON LAWYER CONDUCT

Deborah S. McKeown
Commission Counsel

1015 Sumter Street, Suite 305
Columbia, South Carolina 29201
Telephone: (803) 734-2037
Fax: (803) 734-0363

April 30, 2012

PERSONAL AND CONFIDENTIAL

Mark Matthews
201 Cashua Street
Darlington, SC 29532

RE: Lawyer: Jon Rene Josey, Esquire
Matter Number: 11-DE-L-1311
NOTICE OF FINAL DISPOSITION

Dear Mr. Matthews:

You previously filed a complaint with the Commission on Lawyer Conduct about Jon Rene Josey, Esquire in connection with the above-referenced matter. The Commission instructed the Office of Disciplinary Counsel to conduct an investigation into your allegations.

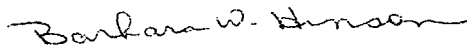
On April 20, 2012, an investigative panel of the Commission convened to consider the recommendation of Disciplinary Counsel for disposition of this matter based on the information gathered in the investigation. As required by the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, the inquiries of the panel were limited to whether or not there was evidence of ethical misconduct on the part of Mr. Josey that would warrant further investigation or the filing of formal charges. After considering the information received from you, Mr. Josey's response, and the report of Disciplinary Counsel setting forth the results of the investigation, the panel voted to dismiss your complaint.

At the direction of the Commission, I am notifying you of the action taken on this matter. This dismissal constitutes a final disposition of your complaint. As required by

Mark Matthews
April 30, 2012
Page Two

the rules, Mr. Josey is being notified of the action taken by the investigative panel by copy of this letter.

Sincerely,



Barbara W. Hinson
Administrative Assistant

BWH/

cc: Jon Rene Josey, Esquire

William C. Campbell, Esquire
Assistant Disciplinary Counsel

EXHIBIT

G



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL
BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
TELEPHONE: (843) 383-4114
FAX: (843) 383-4116
E-MAIL: jbaxley@sccourts.org

July 26, 2012

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

Aimee J. Zmroczek, Esquire
A.J.Z. Law Firm, LLC
1001 Washington Street, Suite 201
Columbia, SC 29201

Douglas N. Truslow, Esquire
Truslow & Truslow
P.O. Box 1456
Columbia, SC 29202

Re: Pee Dee Health Care, P.A. v. Estate of Thompson, 2010-CP-16-0332
Jim Anasti v. Lance Wilson, et. al., 2007-CP-40-0576

Counsel:

Thank you for your patience while the sanctions matters relating to the above-named cases have remained under advisement. After considering the arguments made by counsel at the hearing and reviewing the voluminous submitted documents, as well as multiple Clerk of Court files, the Court has decided to (1) grant Attorney Ballard's motion for sanctions, (2) grant Attorney Truslow's motion to quash and for sanctions, and; (3) require Attorney Megna to self-report his conduct to the Office of Disciplinary Counsel by serving upon that office the Orders to be issued in these cases, together with the Order of the Honorable Casey L. Manning issued April 3, 2008 in *Anasti*.

Moreover, because of the willful conduct recited in subitem two (2) in the next paragraph of this letter, this Court finds Attorney Megna has directly and intentionally violated a Court order, and imposes an additional sanction pursuant to Rule 11, SCRPC. It is an unfortunate thing when this Court must Order someone to be civil, particularly a person of Attorney Megna's educational level and socioeconomic status, but it is an entirely different matter when a licensed professional misuses the procedural processes and legal mechanisms of this Court in an abusive manner, with an ulterior motive, and in violation of previous Court order. This is not the first time that Attorney Megna has been found to have engaged in misrepresentations to and dishonesty with the Court in this very case.

FILED
JUL 30 AM 11:45
J. MICHAEL BAXLEY
CLERK OF COURT
FOURTH JUDICIAL CIRCUIT
COLUMBIA, SC

(See *Anasti* Order of Judge Manning). For his repetitive actions, this Court requires him to serve thirty (30) days in the Darlington County Detention Center pursuant to the inherent authority of this Court to take whatever steps are necessary to enforce its own Orders, assure the appropriate administration of justice, and to deter Attorney Megna from prosecuting any future action in bad faith.

After full review, this Court makes the following findings that warrant the above stated decisions:

(1) Attorney Megna, after being disqualified by this Court as counsel in *Thompson*, failed to comply with the Court's instructions to cease representation, resulting in this Court issuing an Order dated August 15, 2011 quashing all discovery, motions, subpoenas, etc. that had been filed by Attorney Megna in *Thompson* after disqualification;

(2) Thereafter, Attorney Megna used the *Anasti* case in Richland to propound discovery related to the *Thompson* case in Darlington, such discovery not being in any way relevant to the issues in *Anasti* as the two cases involve entirely different issues in separate areas of the law, which constitutes an abuse of civil process and a direct, flagrant violation of this Court's disqualification Order. This Court is mystified by this conduct, as Attorney Megna's successor counsel in *Thompson*, his law partner Benjamin R. Matthews, could have propounded any discovery needed therein;

(3) A review of the correspondence, memoranda, and emails from Attorney Megna in both cases reveals a continuous pattern of violations of the civility and professionalism requirements of South Carolina's attorney oath with respect to members of the Bar, using language that is accusatory and demeaning, including inappropriate references to the judiciary, as well as unwarranted criticisms of other professionals, parties, and witnesses; and,

(4) Attorney Megna's actions have resulted in the tremendous unnecessary consumption of attorney time, excessive and unnecessary costs to litigants, and the significant waste of judicial resources and public funds required to operate the court system.

Attorney Ballard's Motion for Sanctions

On July 30, 2011, Attorney Ballard received a subpoena signed by Attorney Megna in the Darlington County case of *Pee Dee Health Care v. Estate of Thompson*. This subpoena, issued from Richland County, commanded Attorney Ballard to produce certain documents for inspection and copying in Darlington County, thereby violating of Rule 45(a)(2) of the South Carolina Rules of Civil Procedure. Furthermore, at the time Attorney Megna executed the subpoena, he had been disqualified as counsel in *Thompson* and thus had no authority to issue the subpoena. The subpoena was quashed *sua sponte* by Order of this Court dated

August 15, 2011. Finally, the materials requested, to the extent they existed, were not likely relevant to the issues in *Thompson*, thereby violating Rule 26(b)(1) of the South Carolina Rules of Civil Procedure. Therefore, based on the foregoing reasons and the requirements of Rule 11 SCRCP, the Court finds it appropriate to grant Attorney Ballard's Motion for Sanctions in the award of attorney's fees necessitated by Attorney Megna's inappropriate conduct. Because Attorney Megna is the chief executive officer of the party he was representing at the time these violations occurred, this award of attorney fees is joint and several against Attorney Megna personally and Pee Dee Health Care, and counsel is instructed to prepare the Order in such a way as to constitute a judgment that shall be filed in the office of the Clerk of Court, to accrue interest at the appropriate rate, in Attorney Ballard's favor against both entities.

In support of her Motion for Sanctions, Attorney Ballard submitted an Affidavit of Attorney Fees along with an accompanying time sheet. However, the time sheet includes entries relating to time that Attorney Ballard and her staff spent responding to grievances filed by one Mark Matthews arising from these cases (Attorney Ballard voluntarily disclosed the existence of these grievances). The grievance matters are separate and distinct from the improper subpoena; therefore, the Court asks that Attorney Ballard submit another Affidavit of Attorney Fees and time sheet that includes only that time spent responding to the improperly issued subpoena, include the corrected attorney/staff fee figure in a proposed Order, under the *Thompson* caption, granting sanctions consistent with the Court's reasoning outlined above. The Order should reflect that parallel sanctions are being granted in *Anasti* by separate Order. The Order should also require Attorney Megna to report to the Darlington County Detention Center within thirty days of the date of the service of this Order, after making arrangements as to the exact date and time of his arrival with Detention Center Director Major Mitch Stanley (843-398-4220), to begin service of a thirty day sentence, to be served day for day, and to run concurrent with a similar sentence imposed in *Anasti*. Please submit the new attorney fee affidavit along with the proposed Order via e-mail (jbaxleylc@sccourts.org) as a Word document within thirty days of the date of this letter.

Mr. Truslow's Motion to Quash and Motion for Sanctions

On February 28, 2012, Attorney Megna issued a subpoena to Attorney Truslow, who represents Plaintiff James Anasti in the Richland County Case of *Anasti v. Lance Wilson, et. al.* The subpoena was issued from Darlington County and failed to provide the required ten-day notice, thereby violating Rule 45 of the South Carolina Rules of Civil procedure. Attorney Truslow was also served with a set of interrogatories that represented an impermissible attempt on Attorney Megna's part to engage in discovery after his former client's (Gina Lee) involvement as a party defendant in *Anasti* had ended. Moreover, the interrogatories attempted to obtain information that was only relevant to the separate, distinct, and unrelated

Thompson case. Therefore, based on the foregoing reasons and the requirements of Rule 11 SCRPC, the Court finds it appropriate to grant Attorney Truslow's Motion to Quash the Subpoena and his Motion for Sanctions.

In support of his Motion for Sanctions, Attorney Truslow submitted a time sheet detailing the time he spent reviewing the files and addressing the issues related to these cases. The Court finds that this time sheet is reasonable and will therefore award Attorney Truslow \$31,547.25 in attorney fees and \$295.14 in costs. The Court declines to employ a star factor in calculating the attorney fees. The Court requests that Attorney Truslow prepare a proposed Order, under the caption of *Anasti*, quashing the subpoena and granting sanctions that are consistent with the Court's reasoning outlined above. The Order should reflect that parallel sanctions are being granted in *Thompson* by separate Order. The proposed Order should be sent via e-mail (jbaxley@cscourts.org) as a Word document within thirty days of the date of this letter. This award of attorney fees is against Attorney Megna personally, and counsel is instructed to prepare the Order in such a way as to constitute a judgment that shall be filed in the office of the Clerk of Court, to accrue interest at the appropriate rate, in Attorney Truslow's favor against Attorney Megna. The Order should also require Attorney Megna to report to the Darlington County Detention Center within thirty days of the date of the service of this Order, after making arrangements as to the exact date and time of his arrival with Detention Center Director Major Mitch Stanley (843-398-4220), to begin service of a thirty day sentence, to be served day for day, and to run concurrent with a similar sentence imposed in *Thompson*.

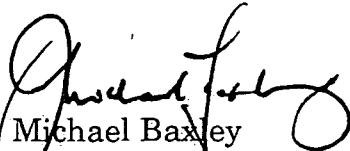
Attorney Megna's Service of Orders on Office of Disciplinary Counsel

The Court finds that Attorney Megna's conduct throughout these matters has been clearly violative of the Rules of Professional Conduct. Counsel is requested to include specific examples of such conduct within the proposed Orders as outlined in the memoranda submitted to the Court while the sanctions motions were pending. Therefore, the Court finds it appropriate to require Attorney Megna to self-report these actions and concomitant sanctions by service of the Orders to be issued in this case, by United States certified mail return receipt requested, to Lesley M Coggiola, Director of Office of Disciplinary Counsel, Post Office Box 12159, Columbia, South Carolina, 29211, together with an explanatory cover letter, within thirty (30) days of service of each Order upon him. This service is to include a copy of the Order of the Honorable Casey L. Manning issued April 3, 2008 in *Anasti*. A copy of the letter of service enumerating the documents being served, together with the signed return receipt, is to be filed with the Clerk of Court in the appropriate case file within that same time frame.

In issuing this sanctions Order, this Court is aware that there yet remains a sanctions motion against Attorney Megna outstanding in *Anasti*, not before this Court, concerning other allegations of misconduct. It is unfortunate that we find ourselves in this current situation, but I trust that we will all learn from this

experience and move forward to more positive endeavors. Again, thank you for your patience while these matters have remained under advisement.

Sincerely,



J Michael Baxley

cc ✓ The Honorable Scott Suggs (for filing 2010-CP-16-0332) ✓
The Honorable Jeanette McBride (for filing 2007-CP-40-0576)

2012 JUL 30 AM 11:45
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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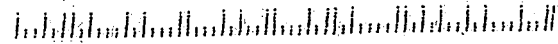
J. Michael Baxley, Judge
The Circuit Court of the Fourth Judicial Circuit
531 East Carolina Avenue
Hartsville, SC 29550-4311

FLORENCE SC 295
27 JUL 2012 PM 1 L



Honorable Scott B. Suggs
Darlington County Clerk of Court
Attention: Teresa
1 Public Square, Room B4
Darlington, SC 29532

2953230293



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332

(Appeal Tracking Number 2011197671)

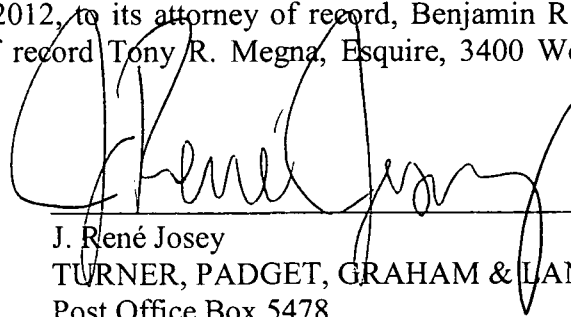
Pee Dee Health Care, P.A.....Appellant

v.

Estate of Hugh S. Thompson..... Respondent

PROOF OF SERVICE

I certify that I have served Respondent's Reply in Support of Respondent's Motion to Dismiss Appeal for Failure to Comply with Rule 210 SCACR, or, in the Alternative, for Expedited Compliance with Rule 210 and for Additional Time to File Respondent's Final Brief on Pee Dee Health Care, P.A., by depositing copies of the same in the United States mail, postage prepaid, on November 9, 2012, to its attorney of record, Benjamin R. Matthews, Esquire and its former trial attorney of record Tony R. Megna, Esquire, 3400 West Avenue, Columbia, SC 29203.



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

ATTORNEYS FOR RESPONDENT

RECEIVED

NOV 14 2012

SC Court of Appeals

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

November 9, 2012

Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
Case No.: 2010-CP-16-0332
Tracking No.: 2011197671
TPGL File No.: 10667.101

Dear Ms. Kitchings:

Please find enclosed the original (unbound) and seven (7) copies of the Respondent's Reply in Support of Respondent's Motion to Dismiss Appeal for Failure to Comply with Rule 210 SCACR, or, in the Alternative, for Expedited Compliance with Rule 210 and for Additional Time to File Respondent's Final Brief. We have also enclosed the original and one copy of the Proof of Service. Please file the originals in your office and return a clocked copy of each to us in the self-addressed stamped envelope provided.

By copy of this letter to counsel for the Appellant, Ben R. Matthews, Esquire and its former trial attorney Tony R. Megna, Esquire, we are herewith serving them with copies of Respondent's Reply in Support of Respondent's Motion to Dismiss and Proof of Service.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ/vlb
Enclosures

Cc: John Jay James, II, Esquire (w/enclosures)
Ben R. Matthews, Esquire (w/enclosures)
Tony R. Megna, Esquire (w/enclosures)

RECEIVED

NOV 14 2012

SC Court of Appeals

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Phone (843) 662-9008 • Fax (843) 667-0828 • turnerpadget.com