

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-001717

RECEIVED
MAR 05 2018
SC Court of Appeals

Cynthia Holmes, M.D.,

Appellant,

v.

Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,
Manton Grier and James Y. Becker,

Respondents.

**RESPONDENTS' MEMORANDUM CONCERNING
TIMELINESS OF APPEAL**

Mary M. Caskey, SC Bar No. 76198
Mary Cothonneau Eldridge, SC Bar No. 102698
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, Suite 2200 (29201)
Post Office Box 11889 (29211)
Columbia, South Carolina
Attorneys for Respondents

INTRODUCTION

Respondents James Y. Becker, Manton Grier, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. (“Respondents”), file their Memorandum Concerning Timeliness of Appeal, as requested by this Court in its letter dated February 26, 2018. For the reasons set forth below, Appellant Cynthia Holmes’ (“Holmes”) Notice of Appeal (the “Notice”) was not timely, and therefore her appeal must be dismissed.

STATEMENT OF THE FACTS

The underlying action stems from litigation commenced by Holmes against East Cooper Community Hospital (“East Cooper”), during which she was represented by Respondents. The facts surrounding this litigation are not in dispute. On April 6, 2007, Holmes brought a malpractice action against Respondents arising from litigation Holmes commenced against East Cooper following the hospital’s decision to revoke her medical staff privileges. On Holmes’ behalf, Respondents unsuccessfully appealed for reinstatement of admitting privileges through East Cooper’s administrative process and, later, filed a lawsuit in federal court. The relationship between Holmes and Respondents deteriorated, and Holmes subsequently filed the malpractice action. After protracted litigation over Respondents’ handling of her case against East Cooper, Holmes’ claims against Respondents were dismissed, and the trial court issued an order of sanctions against Holmes in the amount of \$200,000.00 (the “Judgment”). The Judgment was affirmed by this Court on June 4, 2014. *See Holmes v. Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the malpractice action, this Court issued an order directing Clerks of Court in South Carolina to refuse to accept further *pro se* filings from Holmes in actions related to the East Cooper Litigation. (*See Order*, entered in *Doe v. Duncan*, No. 2008-UP-596,

(Dec. 2, 2009)) (the “*Doe* Order”) (a copy is attached as **Exhibit A**). Holmes’ license was later suspended for a period of two years. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014). As of March 2, 2018, Holmes has not been reinstated.

In November 2016, Respondents commenced formal efforts to collect the Judgment by initiating supplemental proceedings with the Court of Common Pleas for Charleston County (the “Circuit Court”). Although Respondents properly issued Requests for Production as part of the supplemental proceedings, Holmes only produced partial responses to the Requests for Production. Holmes also objected, without legitimate reason, to a subpoena Respondents validly issued to Bank of America. In response, Respondents filed a Motion to Compel, and the Circuit Court subsequently entered and filed an order granting the Motion to Compel on June 23, 2017 (the “Order”). Holmes first attempted to appeal the Order by filing a notice of appeal on July 29, 2017, which she signed *pro se* (the “July Notice”). Over one month later, Holmes, through her attorney Chalmers C. Johnson, filed the subject Notice on August 9, 2017—47 days after the Circuit Court entered its Order. (Copies of both notices are attached as **Exhibit B**.)

ARGUMENT

The South Carolina Appellate Court Rules clearly provide that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order of judgment.” Rule 203(b)(1), SCACR. “[T]he time to file a notice of appeal pursuant to Rule 203(b), SCACR, begins to run when written notice that the order has been entered into the record by the clerk of court has been received.” *Upchurch v. Upchurch*, 367 S.C. 16, 25, 624 S.E.2d 643, 647 (2006). Moreover, courts interpreting this Rule have unequivocally held that it is jurisdictional, and that “if a party misses the deadline [to serve the notice of appeal], the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to

“rescue” the delinquent party by extending or ignoring the deadline for service of the notice.”
USAA Prop. And Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting
Elam v. S.C. Dep’t of Transp., 361 S.C 9, 14-15, 602 S.E.2d 772, 775 (2004)).

As stated above, the Circuit Court filed the Order on June 23, 2017, and Holmes alleges that she received a copy of the Order by mail on June 30, 2017. (Notice of Appeal at 5.) Thus, the absolute latest date Holmes could have filed her Notice in accordance with Rule 203 was July 30, 2017. However, Holmes did not properly file her Notice until August 9, 2017—ten days beyond the deadline set forth in Rule 203. Thus, Holmes’ Notice was not timely and must be dismissed.

Moreover, Holmes’ argument that she timely served Respondents through the July Notice is without merit. As noted above, the Order Holmes seeks to appeal arises from supplemental proceedings Respondents initiated in order to collect on the Judgment. Because the Judgment was awarded in response to the East Cooper Litigation, it follows that the supplemental proceedings Respondents initiated to collect the Judgment, and thus any orders issued in the supplemental proceedings, likewise arise from the East Cooper Litigation. Thus, any filings made in this matter fall within the scope of the *Doe* Order. Here, however, Holmes signed the July Notice *pro se*. The July Notice clearly violates the *Doe* Order, and must be disregarded. Thus, the only proper notice of appeal before this Court is the Notice filed on August 9, which is untimely.

CONCLUSION

For the foregoing reasons, Respondents request that this Court dismiss Holmes’ Appeal because the Notice was untimely.

Respectfully submitted,



Mary M. Caskey, SC Bar No. 76198
Mary Cothonneau Eldridge, SC Bar No. 102698
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Telephone: (803) 779-3080
(803) 765-1243 (fax)

Attorneys for Respondents

March 5, 2018
Columbia, South Carolina

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

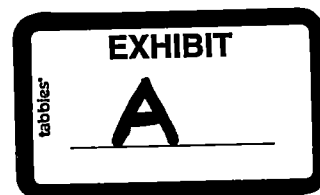
Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collie. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collie are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Homes engaged in a lengthy, albeit fruitless, administrative appeal of the



Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)



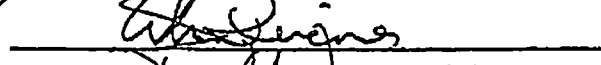
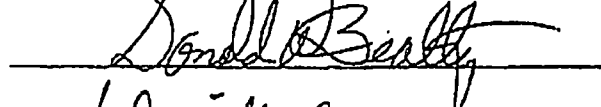

Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

December 2, 2009

84285

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

RECEIVED

AUG 14 2017

SC Court of Appeals

Doe (C. Holmes),

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

NOTICE OF APPEAL

The Appellant appeals the attached order of the 9th Judicial Circuit Judge entered June 23, 2017. The Order was post marked as mailed by the Court on June 26, 2017 and was received by Appellant on June 30, 2017. Appellant served a notice of this appeal on Respondent by mail on July 29, 2017. A copy of the notice and proof of service for that mailing are attached. The undersigned hereby gives notice to the Courts of his appearance and of the service of the notice of appeal in this matter.

Dated: August 9, 2017



Chalmers C. Johnson
2965 Beach Street, E.
Port Orchard, WA 98366
(425) 999-0900
chalmersjohnson@gmail.com
Attorney for the Appellant



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

Doe (C. Holmes),

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

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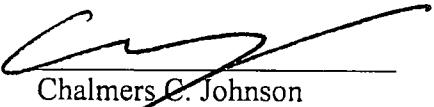
SC Court of Appeals

**PROOF OF SERVICE FOR
NOTICE OF APPEAL**

I certify that, on August 9, 2017, I faxed a copy of a cover letter and the notice of appeal, with attachments, as well as this proof of service, to the SC Court of Appeals and mailed a copy of each as well to the Respondent's attorney and the Charleston County Clerk of Court at:

Charleston County Clerk of Court
Circuit Court
100 Broad Street, Ste. 106
Charleston, SC 29401

Mary M. Caskey
1201 Main St. #2200
Columbia, SC 29201


Chalmers C. Johnson
2965 Beach Street, E.
Port Orchard, WA 98366
(425) 999-0900
chalmersjohnson@gmail.com
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

Doe (C. Holmes),

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and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

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AUG 14 2017

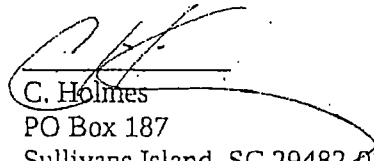
SC Court of Appeals

Respondents.

NOTICE OF APPEAL

The Appellant appeals the order of the 9th Judicial Circuit Judge entered June 23, 2017. Pursuant to Rule 203 and controlling precedent, the Appellant timely files and serves Respondents. All parties required to be served have been served.

Dated 07.29.17


C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

Cynthia Holmes,

Appellant,

v.

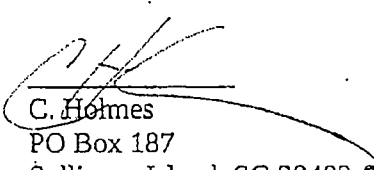
James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to M.M. Caskey on this date at 1201 Main St. #2200, Columbia, SC 29201.

Dated July 29, 2017


C. Holmes
PO Box 187
Sullivans Island, SC 29482-0187
843.883.3010

Chalmers C. Johnson
2965 Beach Drive, E.
Port Orchard, WA 98366
(425) 999-0900
Chalmersjohnson@gmail.com

August 9, 2017

By Fax: 803-734-1839

Clerk of Court
S.C. Court of Appeals
1220 Senate St.
Columbia, SC 29201

RECEIVED

AUG 14 2017

SC Court of Appeals

RE: Homes v. Becker, et al.
Case No. 2007-CP-10-1444

Dear Clerk of Court:

The Respondent in this matter was served with a notice of appeal by mail on July 29th. The Appellant received a copy of the Order by mail on June 30th. I am entering a notice of appeal, with the notice and proof of service showing that Respondent was served with a notice of the appeal within thirty days of the Appellant's receipt of the Order under appeal. I have enclosed the following:

1. Original Notice of Appeal, with attachments;
2. Original Proof of Service for Notice of Appeal and attachments and one copy of the Proof of service;
3. A copy of the Order being appealed;
4. SASE.

Would you please file the Notice of Appeal and return a clocked copy of the proof of service to me in the enclosed SASE? Thank you.

Sincerely,


Chalmers C. Johnson

Cc:
Charleston County Clerk of Court
Circuit Court
100 Broad Street, Ste. 106
Charleston, SC 29401

Mary M. Caskey
1201 Main St. #2200
Columbia, SC 29201

P.S. Filing fee of \$100 Enclosed as well.

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UNITED STATES POSTAGE
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MAILED FROM ZIP CODE 98366

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Chalmers Johnson
GSJones Law Group, P.S.
1155 Bethel Ave.
Port Orchard, WA 98366

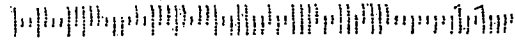
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AUG 14 2017

SC Court of Appeals

Clerk of Court
S.C. Court of Appeals
1220 Senate St.
Columbia, SC 29201

29201-376999



THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-002403

RECEIVED
MAR 05 2018
SC Court of Appeals

Cynthia Holmes, M.D.,

Appellant/Petitioner,

v.

Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,
Manton Grier and James Y. Becker,

Respondents.

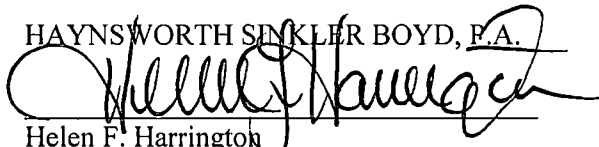
CERTIFICATE OF SERVICE

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of the **Respondents' Memorandum Concerning Timeliness of Appeal** to be placed in the U.S. Mail, postage prepaid, addressed to Plaintiff at her last known address, which address is as follows:

Cynthia Holmes, M.D.
Post Office Box 187
Sullivans Island, SC 29482

Chalmers C. Johnson, Esquire
2695 Beach Drive, East
Port Orchard, WA 98366

this 5th day of March, 2018.

HAYNSWORTH SINKLER BOYD, P.A.

Helen F. Harrington
Litigation Paralegal

Columbia, South Carolina

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

RECEIVED

MAR 05 2018

SC Court of Appeals

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WEBSITE www.hsblawfirm.com

MARY COTHONNEAU ELDRIDGE
DIRECT DIAL NUMBER 803.540.7708
EMAIL meidridge@hsblawfirm.com

March 5, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *C. Holmes, M.D. v. James Y. Becker, Manton Grier, and Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A.*
Case No. 2007-CP-10-1444
Appellate Case No. 2017-001717
HSB File No. 04625.1439

Dear Ms. Kitchings:

Enclosed in connection with the referenced matter, and in response to this Court's letter dated February 27, 2018, directing the parties to file a memorandum addressing the issue of timeliness of service of the notice of appeal, is an original and (6) copies of the Respondents' Memorandum Regarding Timeliness of Appeal, together with our Proof of Service on Appellant. We would appreciate your having the originals filed and returning one clocked copy to us via my courier.

Thank you for your attention to this matter, and please let me know if you have any questions.

Sincerely yours,



Mary Cothonneau Eldridge

MCE/rhb

Cc: Chalmers C. Johnson, Esq.
Mary M. Caskey, Esq. (via e-mail only)