

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-000555

South Carolina Lawyer's Weekly, by and through its principal,
Dolan Publishing Company. Appellant,

v.

Scarlett Wilson, Solicitor of the Ninth Judicial Circuit
An elected public official, Respondent,

**RETURN OF RESPONDENT
TO PETITION FOR REHEARING**

ALAN WILSON
Attorney General

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Appellant has failed to show that this Court has overlooked or misapprehended any points pertinent to this appeal. Therefore, Appellant's Petition for Rehearing must be denied under Rule 221, SCACR.

ARGUMENT

I

THIS COURT PROPERLY DETERMINED THAT RESPONDENT DID NOT WAIVE CONFIDENTIALITY

Appellant contends this Court erred in finding that Respondent "did not reveal anything about the content of [the] complaints." What the Court said was correct: "Solicitor Wilson revealed the existence of disciplinary complaints and revealed the source of certain of those complaints. She did not reveal anything further about the content of those complaints." The response to the FOIA request stated generally that "a number of grievances have been filed against Ms. Wilson by or at the behest of disgruntled criminal defense lawyers who disagree with her management of the Solicitor's Office and in some cases with her handling of cases." R. p. 21. This statement in the response was about the source of the complaints: disgruntled defense lawyers who disagree with her. It did not reveal the substance of the complaints themselves. Moreover, the FOIA response quite clearly asserted Rule 12 confidentiality.

In this Petition, Appellant argues for the first time that this Court should have remanded to allow the fact finder to make its own findings on waiver. Contrary to this argument Appellant now makes, Lawyers Weekly asserted in its brief that the lower court erred in failing to decide that waiver had occurred as a matter of law. Appellant argued that "the undisputed facts permitted the trial judge to conclude that a waiver had occurred as a matter of law. . . ." and "erred in failing to

conclude that Respondent has waived her right to withhold the requested documents from disclosure.” (Brief at pp. 11 & 12 – emphasis as written).

The lower court properly determined that no waiver had occurred based upon Rule 12, RLDE, and the letter itself. R., p. 5 (“Nothing in Rule 12 creates a waiver of confidentiality except when the Lawyer signs a waiver for the Commission . . . Certainly, Ms. Wilson’s letter had no intent whatsoever to waive confidentiality when she invoked the Rules on Lawyer Disciplinary Enforcement in her response letter and made quite clear that she believed, and correctly so, that the documents sought were not public.”) Appellant simply disagreed with the lower court’s decision. No basis exists for further consideration by the Circuit Court or this Court.

II

The Court Of Appeals Properly Determined That Rule 12 Controls As To The Confidentiality Of The Documents

Appellant’s grounds 3 - 5 rehash arguments already covered in briefing and rejected by this Court’s Opinion. Appellant contends that Rule 12 constrains people and proceedings rather than documents and that the Rule cannot control FOIA. Appellant briefed those arguments, and this Court properly ruled differently.

Rule 12 does speak directly to the documents themselves in stating that the “documents . . . shall become public 30 days after the filing of the answer” or as otherwise provided if no answer is filed. Before then, the documents are non-public.

Rule 12 most certainly does lawfully affect FOIA. FOIA expressly exempts “[m]atters specifically exempted from disclosure by statute or law” §30-4-40(a)(4). Rule 12 is such a “law” as this Court recognized. Appellant fails to cite §40-5-50 which states that “[u]pon such rules and

regulations becoming effective [including rules adopted under §40-5-20 regarding lawyer discipline], they shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict.” These provisions make Rule 12 a law and therefore, matters controlled by it are exempt from disclosure under FOIA. As this Court stated, “the General Assembly’s decision to allow court rules to carry the force of law satisfies any potential separation of powers issues.”

III

THIS COURT WAS NOT REQUIRED TO RULE ON ISSUES THAT WERE NOT DISPOSITIVE OR NECESSARY FOR ITS DECISION

Appellant makes the peculiar argument that this Court should have addressed issues that would not have affected the conclusion that this case should be dismissed. Even if, *arguendo*, the Respondent were a public agency, the case would still be subject to dismissal because the documents are not public. Even if, *arguendo*, the documents were not an “invasion of personal privacy” under §30-4-40(2), they would still be exempt from disclosure by law under §30-4-40(4).

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Rehearing.

Respectfully submitted,

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[Signature block continues next page]

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April 9, 2018

Attorneys for Respondent Scarlett Wilson

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Appellant with the Respondent's Return to Petition for Rehearing by mailing copies to its attorneys at the address below via the United States Mail April 9, 2018.

Desa Ballard, Esquire
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Ballard & Watson
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West Columbia, SC 29171



J. EMORY SMITH, JR.
Deputy Solicitor General
Attorney for Respondent Scarlett Wilson

April 9, 2018



ALAN WILSON
SECURITIES COMMISSIONER

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April 9, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
HAND DELIVERED

Re: South Carolina Lawyers Weekly v. Scarlett Wilson, Solicitor
Appellate Case No. 2016-000555

Dear Ms. Kitchings:

Enclosed for filing with your Office are the original and six copies of the Return of the Respondent to the Petition for Rehearing herein together with a certificate of service. Please confirm filing by stamping the enclosed copy of this Return.

Thank you for your assistance.

Respectfully submitted,

J. Emory Smith, Jr.
Deputy Solicitor General

cc: Desa Ballard, Esquire
Harvey M. Watson, III, Esquire