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April 12, 2018

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Hand Delivered

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

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APR 12 2018

SC Court of Appeals

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus  
Appellate Case Number: 2014-001373  
Civil Action Number: 2007-CP-40-3365  
Claim Number: 44654  
Our File Number: 104.7785

Dear Ms. Kitchings:

Respondents (Defendants) submit the following in response to the Rule 208(b)(7) submitted by counsel for Plaintiff-Appellant on April 10, 2018. The point raised by opposing counsel is completely without merit.

As the Defendants have previously pointed out, *Will v. Michigan State Police*, 491 U.S. 58 (1989) is universally recognized as holding that “neither a state agency nor its officials acting in their official capacities are ‘persons’ amenable to suit under § 1983.” *Manning v. S.C. Dep’t of Highway & Pub. Transp.*, 914 F.2d 44, 48 (4th Cir. 1990). On the other hand, and apparently unknown to opposing counsel, it is equally well settled that 42 U.S.C. § 1988 authorizes the award of attorneys’ fees against states and state agencies when state agency defendants are sued in their official capacities. *See, e.g., Brandon v. Holt*, 469 U.S. 464, 472 (1985). This issue was first settled in *Hutto v. Finney*, 437 U.S. 678, 694 (1978), which quoted the legislative history of Section 1988 as follows: “[I]t is intended that the attorneys’ fees, like other items of costs, will be collected either directly from the official, in his official capacity, from funds of his agency or under his control, or from the State or local government (whether or not the agency or government is a named party.”

In *Doe v. Kidd*, cited by Plaintiff’s counsel, monetary damages were sought, but never awarded. Such relief as was awarded was prospective only. There was never a judgment in favor of the plaintiff, Doe, for damages for personal injuries. As the Fourth Circuit described that case, it was an action “against the South Carolina Department of Disabilities and Special Needs

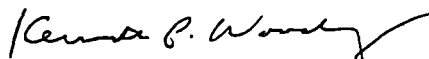
("DDSN"), the South Carolina Department of Health and Human Services ("DHHS"), as well as Linda Kidd, Stan Butkus, Kathi Lacy and Robert Kerr, in their official capacities as state administrators . . ." *Doe v. Kidd*, 419 F. App'x 411, 412 (4th Cir. 2011). The award of attorneys' fees in that case was completely consistent with the principles cited in the preceding paragraph, and does not in any way support Plaintiff's very belated claim that DDSN can be held liable for damages in a Section 1983 action. Any such claim was definitively foreclosed by *Will, supra*.

Defendants would also reiterate that any argument that DDSN is liable under Section 1983 has been abandoned by the plaintiff estate on at least four previous occasions in this lawsuit. *See Reply Memorandum in Support of Second Petition for Rehearing at 3.*

With highest regards, I am

Sincerely yours,

DAVIDSON, WREN & PLYLER, P.A.



Kenneth P. Woodington

KPW/mss

cc: (w/ Enclosures)

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