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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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MAY 09 2018
SC Court of Appeals

Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176;
2015 CP-10-5486; 2016-CP-10-1632

Appellate Case No. 2017-001996

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, John Doe 194, John Doe 245
and Father Doe 245, and John Doe 297 Appellants,

v.

The Bishop of Charleston, a Corporation Sole,
Robert Gugliemone, The Bishop of Charleston, in his official capacity,
Rev. Monsignor Martin Laughlin, former Administrator of the
Diocese of Charleston, in his official capacity, Robert J. Baker,
former Bishop of Charleston, in his official capacity,
Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC Respondents.

**RESPONDENTS/LAWYER DEFENDANTS'
JOINT MOTION TO STRIKE PORTIONS OF APPELLANTS' INITIAL BRIEF
AND DESIGNATION OF MATTER AND
EXTEND DEADLINE FOR FILING RESPONDENTS' INITIAL BRIEF**

Pursuant to Rule 240, SCACR, Defendants / Respondents Lawrence E. Richter, Jr., Richter
& Haller, LLC, and David K. Haller (the "Lawyer Defendants") hereby move to strike portions of
Appellants' Initial Brief for failure to comply with Rules 208(b)(1)(C) and Rule 208(b)(4), to strike

certain designations in Appellant's Designation of Matter to be Included in the Record under Rule 210, SCACR, and to extend Respondents' deadline for filing their Initial Brief until 30 days after Appellant serves a brief that complies with the Appellate Court Rules. The grounds for this motion are as follows:

I. Contested Matters in Appellants' Statement of the Case

Rule 208(b)(1)(c) SCACR specifies that the Statement of the Case in the Brief on Appeal "not contain contested matters..." The Statement of the Case is to provide a concise history of the proceedings, not argument. Contrary to this Rule, Appellants' Statement of the Case contains no procedural history of the civil actions before the Court. Appellants do not provide the date of the commencement of the actions in this appeal; the nature of the actions or specific claims asserted; the nature of the defenses; the actions of the lower court; the dates of hearings; the amount involved on appeal; the date and nature of the judgment Appellants ask this Court to review; the date of the service of the notice of appeal; or the date of and description of other orders, decisions and proceedings of the lower court that may have affected the appeal, or may throw light upon the questions involved in the appeal. *See* Rule 208(b)(1)(C), SCACR. Rather, Appellants merely reiterate the allegations (*i.e.*, contested matters) from their complaints alleging legal malpractice related to an underlying class action matter. Even a cursory review of the Statement of the Case reveals argument and contested matters throughout each page. The specific instances are too numerous to catalogue; however, the following are examples. In footnote 1 and again on pages 4 and 8, Appellants argue that the Diocese and the Lawyer Defendants engaged in improper cooperation and collusion, *i.e.*, civil conspiracy. That argument is not only a contested matter, it is a claim Appellants abandoned on the record at the July 20, 2017 hearing, as Judge Nicholson's orders reflect. *See* Order Granting Diocese Defendants' Motion for Summary Judgment, C/A No.

2010-CP-10-5520, August 10, 2017 (“During oral argument on July 20, 2017, Plaintiff’s counsel notified the Court that Plaintiffs were abandoning their cause of action for civil conspiracy as to all defendants in all cases.”) (emphasis added); *and* Order on Lawyer Defendants’ Motions for Summary Judgment p. 10 (“As previously noted, Plaintiffs’ counsel voluntarily conceded at the hearing on July 20, 2017 that summary judgment in favor of all defendants on the cause of action for civil conspiracy was appropriate.”). For Appellants to now argue an abandoned claim in their Statement of the Case is not only a violation of Rule 208, it further illustrates Appellants’ inaccurate recollection of these civil actions. Further violations of Rule 208 are found on pages 4 and 5 of the Statement of the Case, where Appellants allege “judge shopping” and on pages 5 and 6 where Appellants allege that the fee approved by the class action court “took priority”. In fact, Appellants’ Statement of the Case consists almost entirely of improper, contested matters. As a result, Appellants’ Statement of the Case contains no references to the record or to matter designated to be included in the record. The improper and false arguments of contested matters have no place in the Statement of the Case. Therefore, Appellants’ entire Statement of the Case, from page 2 through page 11, should be stricken.

II. Failure to Include References to the Record

Rule 208(b)(4), SCACR, requires that the Initial Brief include “references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal to support the salient facts alleged.” References must be made “to the page and line number of the transcript prepared by the court reporter or by page of the material to be referenced; *e.g.*, Answer p. 7, Motion for Judgment p. 2, Transcript p. 231.” Appellants’ Initial Brief violates Rule 208(b)(4), SCACR, by repeatedly failing to cite to the Record—or to any matter designated to be included in the Record—and instead setting forth alleged facts with no citation. (*See, e.g.*,

Appellants' Initial Brief, p. 13 (second paragraph); p. 14 (first and second paragraphs); p. 15, n. 7). Those alleged facts, which contain no citation, should be stricken.

III. Designation of Matter Not Presented to Lower Court

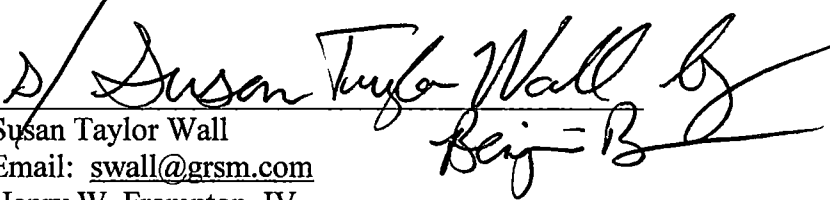
Under Rule 210, SCACR, "the Record shall not, however, include matter which was not presented to the lower court or tribunal." Contrary to that Rule, Appellants' Designation of Matter to be Included in the Record cites to material that was never presented to the lower court. Specifically, none of the following items on Appellants' numbered list were presented to the lower court and, therefore, must not be included in the Record on Appeal: Item 3 (Letter to Judge Nicholson serving R59 motion – date civil action number not provided), Item 8 (Order assigning underlying class action to Nicholson), Item 11 (Complaint in Underlying Lawsuit, C/A No. 2006-CP-18-1310), Item 13 (9/6/06 - Diocese acceptance of service in Underlying Lawsuit with Civil Action number ending in -1310), Item 14 (9/20/06 letter in Underlying Lawsuit from Class Counsel to Judge Goodstein), Item 15 (Complaint in Underlying Lawsuit, C/A No. 2006-CP-27-00143), and Item 16 (Motion for Summary Judgment in Underlying Lawsuit, C/A No. 2006-CP-27-00143, filed November 13, 2009).

All citations to those items and arguments based on those items must be stricken because they were never presented to the lower court in these proceedings and, therefore, are in direct violation of Rule 210(c), SCACR. Including these items in the Record will allow Appellants to present new matter and arguments to this Court which Appellants could have presented to the lower court but did not.

WHEREFORE, Respondents respectfully request that the Court strike Appellants' Initial Brief, specifically the Statement of the Case, the portions of the argument that fail to cite to the Record on Appeal, and Items 3, 8, 11, 13, 14 15 and 16 in Appellant's Designation of Matter; that

Appellants be required to file an Initial Brief and Designation of Matter that complies with the Rules in short order; and that Respondents' deadline to file their Initial Briefs and Designations of Matter run from the time Appellants file and serve a corrected brief and designation conforming with the Rules of Appellate Practice.

Respectfully submitted,


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May 9, 2018
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC Respondents.

PROOF OF SERVICE

I, Benjamin C. Bruner, counsel for Respondents Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached **Respondents/Lawyer Defendants' Joint Motion to Strike Portions of Appellants' Initial Brief and Designation of Matter and Extend Deadline for Filing Respondents' Initial Brief** by e-mail and by depositing a copy of it in the U.S. Mail, postage prepaid, on May 9, 2018, addressed to the following:

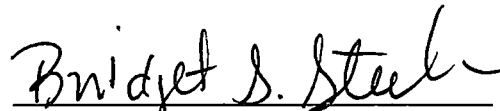
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May 9, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Columbia, SC 29201

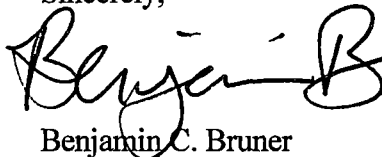
RE: *Doe v. The Bishop of Charleston, et al.*
Appellate Case No.: 2017-001996
Bruner Powell File No.: 3716134.200

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Dear Ms. Kitchings:

Please find enclosed for filing in the appeal the original and six (6) copies of the *Respondents/Lawyer Defendants' Joint Motion to Strike Portions of Appellants' Initial Brief and Designation of Matter and Extend Deadline for Filing Respondents' Initial Brief*, together with Proof of Service and the motion filing fee.

Sincerely,



Benjamin C. Bruner

BCB/gh

Enclosures

cc: Gregg E. Meyers, Esquire
Richard S. Dukes, Jr., Esquire
Brian James Kern, Esquire
Susan Taylor Wall, Esquire