

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

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Case No. 2017-CP-34-00064

Appeal Case No. 2018-001510

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**RECEIVED**  
OCT 22 2018  
SC Court of Appeals

Gary Locklear, Individually and as Personal Representative  
Of the Estate of Roy Locklear, Respondents,

v.

Marlboro County, Marlboro County Sheriff's Office, Marlboro  
County Detention Center, Dr. Charles Bush, Southern Health  
Partners, and South Carolina Law Enforcement Division, Defendants,

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

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**REPLY TO RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR  
REHEARING**

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Appellants respectfully submit this Reply to Respondent's Return to Appellants' Petition  
for Rehearing, pursuant to Rule 240, SCACR.

**ARGUMENT**

The Court of Appeals should grant Appellants' Petition for Rehearing and reverse the  
dismissal of its Notice of Appeal.

Appellants, and all entities doing business or considering to do business in South Carolina, have a reasonable and legitimate interest in protecting proprietary and trade secret information. This legitimate interest must be protected by South Carolina courts.

The central issue in the instant appeal is the circuit court's order that refuses to allow Appellants to produce policy and procedure documents under the confidentiality order, where Appellants have argued such documents contain proprietary information and/or trade secrets. Such confidentiality orders are a staple of litigation discovery and serve as the most basic protection against the widespread and public dissemination of a business entity's work product.

Companies may expend many years, countless hours, and significant capital developing such work product. This work product sets one entity apart from its competitors in the marketplace. Companies should not be coerced into a public disclosure of such work product by being commanded to produce it without a confidentiality order.

Appellants made a good-faith argument for entry of the confidentiality order. That argument is supported by an affidavit of the president and chief executive officer of Appellant. Notwithstanding, the subject order dismisses as illegitimate Appellants' good-faith argument by granting Respondent's counsel attorney's fees and imposing a per diem preemptive sanction, if the subject documents were not produced by a date certain. While an order is a legitimate form of judicial compulsion, in this case adding fees and potential sanctions to a good-faith discovery dispute amounts to unreasonable coercion.

This order places the business entity in a no-win predicament. The business entity is considered (wrongly, in Appellants' view) to have no option except to comply with the order or be held in contempt. Once in contempt it may appeal the contempt citation. This process places a business in great jeopardy should it not fully prevail in overturning the contempt citation. This

is an unreasonable predicament into which to place a business for the “offence” of seeking to protect its proprietary work product. Such a predicament is unnecessary where the entry of a common confidentiality order would not hinder any legitimate use by the Respondent of the protected documents in the litigation and would protect the legitimate interests of the Appellant.

The problem with the comply-or-be-held-in-contempt sword when dealing with proprietary and/or trade secret work product has been recognized in at least one authoritative South Carolina treatise and in South Carolina case law. The specific authority is discussed in Appellant’s Petition for Rehearing, Notice of Appeal, and Return to Respondent’s Motion to Dismiss Appellant’s Appeal, and form the good-faith basis to argue in the instant appeal that an exception exists to the general rule that discovery orders are not immediately appealable. In his Return to Appellant’s Petition for Rehearing, Respondent ignores the case law and summarily dismisses the treatise that lists exceptions to the ordinary rule that discovery orders are not immediately appealable. Appellants, however, have contended from the inception of this appeal that the facts of this case fall under one or more of the potential exceptions to the ordinary rule.

This issue is of significant importance to litigation and business throughout the State of South Carolina. Within days of its issuance, the subject order had already been disseminated and is being used on the opposite side of the state in an attempt to force the Appellant entity to produce similar work product in a matter where Appellant is not even a party. It is foreseeable that the subject order eventually will be used across the state and in every type of litigation to compel entities doing business in South Carolina to disclose what is reasonably argued to be proprietary and/or trade secret work product with no protections whatsoever. This unreasonable, unnecessary, and unprecedented compelled dissemination of proprietary and/or trade secret

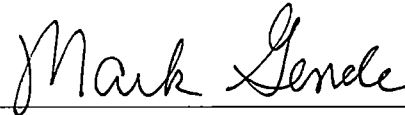
information, without the benefit of review by a higher court, can only have the foreseeable result of chilling competitive business in South Carolina.

**CONCLUSION**

For the reasons stated above, and as is set forth in Appellants' Petition for Rehearing, Return to Respondent's Motion to Dismiss Appellant's Appeal and Notice of Appeal, Appellants respectfully request this Court to consider its Petition for Rehearing, reverse its dismissal of Appellants' Appeal and allow the Appeal to proceed.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



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**ATTORNEYS FOR APPELLANTS**

Columbia, South Carolina

October 22, 2018

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**PROOF OF SERVICE**

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I certify that I have served the Reply to Respondents' Return to Appellants' Petition for Rehearing on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 22, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

October 22, 2018



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SWEENY WINGATE & BARROW P.A.

October 22, 2018

**VIA HAND DELIVERY**

V. Claire Allen  
Deputy Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29202

Reply to: Main Office  
Ryan J. Patane  
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RE: Gary Locklear v. Marlboro County, Dr. Bush, Southern Health Partners, et al.  
Civil Action No.: 2017CP3400064  
Appeal Case No.: 2018-001510  
Our File: 5480-10735


Dear Ms. Allen:

Enclosed for filing are the original and six (6) copies of Reply to Respondents' Return to Appellants' Petition for Rehearing in the above-referenced matter. Please stamp and return a copy of the Reply and one copy of the Proof of Service to our courier. By copy of this correspondence with enclosures, opposing counsel is served with same.

Thank you for your assistance and should you have any questions or concerns, please do not hesitate to contact me directly.

Yours truly,

**SWEENY, WINGATE & BARROW, P.A.**



Ryan J. Patane

RJP/smt  
Enclosures

cc: Patrick J. McLaughlin, Esquire, Wukela Law Firm  
Samuel F. Arthur III, Esquire, Aiken, Bridges, Nunn, Elliott and Tyler  
William H. Davidson II, Esquire, Davidson & Lindemann, P.A.