THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Courts of Common Pleas of Beaufort and Florence Counties
Trial Court Case Nos. 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

The Honorable Kenneth E. Fulp, Jr. and
The Honorable Roger L. Couch

Appellate Case No. 2017-002290

Deborah B. Harwell .....Respondent/Appellant

v.

Robert Bryan Harwell, individually and as the Personal Representative of the Estate of David W. Harwell; and the South Carolina Department of Health and Environmental Control, Division of Vital Records

Of Whom: Robert Bryan Harwell, individually and as the Personal Representative of the Estate of David W. Harwell is the .....Respondent/Appellant

And the South Carolina Department of Health and Environmental Control, Division of Vital Records is the.....Respondent

v.

Law Office of Deidre W. Edmunds, P.A. and Deidre W. Edmunds, individually .....Appellants/Respondents

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CORRECTED RECORD ON APPEAL – VOLUME 1 of 2

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30. January 30, 2017 (filed February 1, 2017) Rebuttal Affidavit of Deirdre W. Edmonds on behalf of Third-Party Defendants, attached as Exhibit 2 to Amended and Supplemental Memorandum of Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds in Opposition to Motion for Sanctions in No. 2016-CP-21-01435 442

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31. January 31, 2017 Expert Report of Burnele Venable Powell, attached as Exhibit 3 to Amended and Supplemental Memorandum of Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds in Opposition to Motion for Sanctions in No. 2016-CP-21-01435 483

32. January 31, 2017 Affidavit of Mitchell C. Payne, attached as Exhibit 4 to Amended and Supplemental Memorandum of Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds in Opposition to Motion for Sanctions in No. 2016-CP-21-01435 494

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43. July 19, 2017 Transcript before the Honorable Roger L. Couch in No. 2016-CP-21-01435 941

This record on appeal does not include the following two items designated by Respondent/Appellant Deborah Harwell, which are the subject of Respondent/Appellant R. Bryan Harwell's Motion to Strike Certain Items from the Record on the grounds that they were not presented to the trial court in this matter:

11. September 14, 2016 Family Court Transcript

15. Last Will and Testament of David Harwell, July 22, 2015

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO. 2015ES2100778 (Florence)
COUNTY OF FLORENCE	)	CASE NO. 2016ES0700302 (Beaufort)

IN THE MATTER OF ESTATE OF DAVID W. HARWELL:	)	
DEBORAH B. HARWELL,	)	
Petitioner,	)	
v.	)	
ROBERT BRYAN HARWELL, individually and as Personal Representative of the Estate of David W. Harwell, and SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL DIVISION OF VITAL RECORDS,	)	ORDER OF REMOVAL TO FLORENCE COUNTY CIRCUIT COURT
Respondents,	)	
v.	)	
LAW OFFICE OF DEIRDRE W. EDMONDS, PA; and DEIRDRE W. EDMONDS, individually,	)	
Third-Party Defendants.	)	

FILED
2016 JUN 10 AM 11:34

Numerous actions involving two or more of the above named parties have been filed in the Estate of David W. Harwell. The decedent was a resident of Florence County at the time of his death and his estate was originally being probated in the Florence County Probate Court. The Petitioner filed Motions for Recusal on the first three actions she filed in this estate. As a result of those Motions an order was issued on March 21, 2016 transferring the entire administration of

the Estate of David W. Harwell, and all litigation in the Estate, to the Beaufort County Probate Court.

During the course of the pending actions the Respondents, Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell filed a Motion to Remove several pending actions to the Circuit Court, on the grounds that the movants have a right to a trial by jury in the actions, which, based on the pleadings, involve an amount in controversy of more than $5,000.00. *See S. C. Code Ann.* § 62-1-302(d)(5). Third–Party Defendants, Deirdre Edmonds and the Law Office of Deirdre W. Edmonds opposed the removal on the grounds that the third-party claims asserted against them are tort claims and therefore not within the subject matter jurisdiction of this Court. The Petitioner joined in this objection, both by the Petitioner herself on her pro se claim, and by and through her attorney of record, on the claims in which the Petitioner is represented by counsel. This argument is preserved and may be raised in the Circuit Court along with any other objections or defenses to the third-party claims.

S. C. Code §62-1-302(d) provides that certain actions filed in the probate court, including those in which a party has a right to a jury trial and involve an amount in controversy of more than $5,000.00, "on motion of a party or by the court on its own motion, made not later than ten days following the date on which all responsive pleading must be filed, must be removed to the circuit court ...." In addition, §62-1-302(f) provides that if an action described in subsection (d) is removed to the circuit court, "the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such other related matter or matters would be in the best interest of the estate or in the interest of judicial economy."

After a review the estate file, I find that all pending formal proceedings involve common questions of law or fact. I further find that for purposes of judicial economy and to avoid the possibility of inconsistent rulings by separate forums on similar questions, the motions of Respondents, Robert Bryan Harwell individually and as Personal Representative of the Estate of David W. Harwell, to remove these actions to the Circuit Court should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all pending formal proceedings in this estate are hereby removed to the Florence County Circuit Court. This Court will retain jurisdiction over the routine administration of the estate. Therefore, I further

order that all attorneys of record in any pending formal proceeding be served with copies of all administrative documents subsequently filed in this estate.

AND IT IS SO ORDERED.

Kenneth E. Fulp, Jr., Special Probate Court
Judge for Florence County
(Probate Judge for Beaufort County)

Beaufort, South Carolina

June 10, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
) IN THE COURT OF FAMILY COURT
) DOCKET NO: 2015 DR 26 691
)
)
DAVID HARWELL, ET AL)
Plaintiff)

) ORDER
)
)
)
DEBORAH HARWELL)
Defendant)

FILED
HORRY COUNTY
2016 JUN 16 PM 3:43
MELANIE HUGGINS-WARD
CLERK OF COURT

I FIND THAT THE PLAINTIFF WAS PRESENT WITH HIS ATTORNEY, KEVIN BARTH. THE DEFENDANT WAS PRESENT WITH HER ATTORNEY, CLIFF WELSH. THIS IS A RULE TO SHOW CAUSE FILED BY THE PLAINTIFF FOR THE DEFENDANT'S WILFUL VIOLATION OF THE COURT ORDER.

IT IS SO ORDERED THAT. THE DEFENDANT IS IN WILFUL CIVIL CONTEMPT OF VIOLATION OF THIS ORDER AND IS SENTENCED TO 45 DAYS IN THE DETENTION CENTER. THE DEFENDANT IS IN WILFUL VIOLATION OF ALLEGATIONS 1-5.

PRESIDING JUDGE, FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

CONWAY, SOUTH CAROLINA
JUNE 16, 2016

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
David W. Harwell, Deceased, by and Through R. Bryan Harwell, Personal Representative,	)	
Plaintiff,	)	JUDGMENT IN A
v.	)	FAMILY COURT CASE
Deborah B. Harwell	)	
Defendant.	)	Docket No. 2015-DR-26-691

Submitted by: KEVIN M. BARTH	Attorney for ■ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL

FILED
HORRY COUNTY
2016 JUL 20 PM 1:55
MELANIE HUGGINS-WARD
CLERK OF COURT

DECISION BY COURT (check all that apply)

■ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other:

IT IS ORDERED AND ADJUDGED: ■ See attached order; ☐ Statement of Judgment by the Court; ☐ Additional information for Clerk:

ORDER INFORMATION

This is a ☐ Temporary ■ Final order. If Final, does this order end the case? ■ Yes ☐ No

Support ■ is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.

Case number under which support is paid if different from this one:

This order involves the immediate ☐ issuance ☐dismissal of a bench warrant, or ■ does not apply.

■ The following motions are ended by this order (include motion filing date): Rule to Show Cause

☐ This order adds or dismisses the following parties to this case:

☐ dismiss ☐ add : ☐ dismiss ☐ add :

INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

Family Court Judge	Judge Code	Date
	4175	7-20-16

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20___ to attorneys of record or to parties (when appearing pro se) as follows:

_____	_____
_____	_____
_____	_____
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEYS FOR THE DEFENDANT(S)**

_____
CLERK OF COURT

Court Reporter:

Custodial Parent (if applicable):

MJB

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE #: 15-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell,	)	
Plaintiff,	)	**CONTEMPT ORDER**
v.	)	
Deborah B. Harwell,	)	
Defendant.	)	

FILED
HORRY COUNTY
2016 JUL 20 PM 1:25
MELANIE HUGGINS-WARD
CLERK OF COURT

DATE OF HEARING..... MAY 19 AND JUNE 16, 2016
TRIAL JUDGE..... MELISSA J. BUCKHANNON
COURT REPORTER..... SALLIE BETH TODD
PLAINTIFF'S ATTORNEY..... KEVIN M. BARTH
DEFENDANT'S ATTORNEY..... CLIFFORD L. WELSH
GUARDIAN *AD LITEM*..... NONE

This matter is before the Court pursuant to an Order and Rule to Show Cause signed and filed by this Court on February 11, 2016. In this Rule to Show Cause the Defendant is required to show cause why she should not be held in contempt of Court for failing to abide by the Order of James A. Spruill, III filed on July 21, 2015 in a number of respects. The Defendant filed responsive pleadings as a self-representing litigant denying that she is in contempt of Court. The Defendant appeared for the first day of trial representing herself, but retained counsel for the second day of trial.

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Prior to proceeding the first day, the Defendant requested a continuance to which the Plaintiff's counsel objected. The Defendant argued that she had not been able to retain counsel due to the parties involved and conflicts, and that she had paid an attorney in Columbia to represent her who withdrew two days before the trial. The Defendant indicated she had another Columbia attorney who agreed to represent her and then changed his mind. The Plaintiff's counsel objected to a continuance and argued that the Defendant had had more than sufficient time to retain counsel, that the Defendant was able to find and retain two attorneys to represent her in probate court in multiple claims that she had filed against the same parties and the Estate, and that the Defendant did not have any trouble getting those attorneys. The Plaintiff's counsel also argued that he had expended considerable effort to have the postal inspector subpoenaed in compliance with *Touhy* regulations, that he had the Defendant's probate attorney and her former family court attorney present under subpoena, and that the Plaintiff's counsel and co-counsel as well as the Plaintiff and his brother all cleared their calendars for this hearing. The Plaintiff's counsel further argued the fact that the Defendant did not have an attorney at the hearing should not prejudice the Plaintiff. The Plaintiff's counsel indicated that the Defendant was served

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almost two months ago, that this matter had to be rescheduled because the Defendant had been evading service.

I denied the Defendant's motion for a continuance based on the reasons argued by the Plaintiff's counsel. The Defendant has had more than adequate time to arrange for legal representation and had the ability to retain an attorney. Her motion to continue was filed the day before the trial and was not timely. The Defendant failed to show good and sufficient cause for a continuance.

Upon the commencement of the second day of trial, counsel for Defendant moved to dismiss the within action, claiming that this Court does not have subject matter jurisdiction due to the death of the original Plaintiff, David W. Harwell. Although Defendant's counsel presented a number of cases to the Court, those cases stand for the proposition that the death of a party *during the pendency of the litigation and prior to the issuance of a Final Order*, terminates the litigation and abates prior Orders. In this matter, however, a Final Order was issued prior to the death of David W. Harwell and the matter is before this Court to enforce that Order. S.C. Code Ann., Sections 63-3-530 (13) and (30) give this Court the exclusive jurisdiction to enforce Family Court Orders such as the one in this case. Additionally, the Order of July 21, 2015, indicated "[t]hat this

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Court reserves jurisdiction to issue any subsequent Orders necessary to accomplish the above division of property...."

Based upon the entire file in this matter and the evidence and testimony presented, I make the following findings of fact and conclusions of law.

JURISDICTION

1. This matter was originally before Judge Spruill on July 21, 2015 for the purpose of approving a mediated agreement between the parties. The Decedent personally appeared with his attorney. The Defendant appeared by and through her Affidavit of Non Appearance, and the Defendant was represented at the hearing by an attorney. As a result of that hearing, an Order was issued and filed that same day. This Court has personal jurisdiction over the parties, and since this is an action for contempt, subject matter jurisdiction as well.

2. Venue is proper and appropriate in this County and State.

AS TO THE ORDER AND RULE TO SHOW CAUSE

3. The Family Court has general authority to hear and decide cases or proceedings "against persons charged with failure to obey an Order of the Court made pursuant to authority conferred by law." S.C. Code Annotated §63-5-530(13) (See also S.C. Code Annotated, Section 63-5-530(30)). "The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)

4. "Contempt results from the wilful disobedience of a Court Order. Before a Court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. In a proceeding for

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contempt for violation of a Court Order, the moving party must show the existence of the Order and the facts establishing the respondent's noncompliance. The burden then shifts to the respondent to establish his defense and inability to comply with the Order." *Brasington vs. Shannon* 288 S.C. 183, 341 S.E. 2d 130 (1986).

5. Civil contempt must be proved by clear and convincing evidence. *Durlach v. Durlach*, 359 S.C. 64, 71, 596 S.E.2d 908, 912 (2004) (citation omitted). A willful act is "one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct.App.1994) (internal quotation marks and citation omitted); accord *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct.App.2001). *Floyd v. Floyd* 365 S.C. 56, 74, 615 S.E.2d 465 (S.C.App.,2005).

6. "The primary purpose of civil contempt is to exact compliance with the Court's Orders, not to punish the contemnor." *Mosely vs. Mosier* 279 S.C. 348, 306 S.E. 2d 624 (1983). Before one can be held in contempt of Court, the Court "must find willful contempt." *Curlee vs. Howle* 277 S.C. 377, 287 S.E. 2d 115 (1982).

7. "A determination of contempt is a serious matter and should be imposed sparingly; whether it is or is not imposed is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without evidentiary support." *Haselwood v. Sullivan*, 283 S.C. 29, 32-33, 320 S.E.2d 499, 501 (Ct.App.1984) (citing *Hicks v. Hicks*, 280 S.C. 378, 312 S.E.2d 598 (Ct.App.1984). *Floyd v. Floyd*, 365 S.C. 56, 72, 615 S.E.2d 465, 473 (S.C.App.,2005).

8. "Civil contempt must be shown by clear and convincing evidence. Criminal contempt must be shown beyond a reasonable doubt. In determining whether a contempt sanction is criminal or civil, one must

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identify the purpose for which the sanction is imposed. Whereas civil contempt is either coercive or remedial in nature, criminal contempt is purely punitive. Incarceration may be either civil or criminal. The distinguishing factor is whether the incarceration is for a definite period of time, which is the hallmark of criminal contempt, or whether the contemnor may avoid or cut short the incarceration by complying with the court's directive, which indicates civil contempt." *DiMarco v. DiMarco*, 393 S.C. 604, 607, 713 S.E.2d 631, 633 (2011) (internal citations omitted).

9. Generally, among the various relief requested in the complaint, the Plaintiff requested that the Defendant be held in contempt for the alleged violations, that the Court enforce its order regarding the tax refund check, that the Court order the Defendant to return any mail of the Deceased or his Estate, that the Defendant be ordered to withdraw all claims that she has submitted to the Probate Court, and that the Defendant be prohibited from further interference with the Deceased's Estate, and that the Defendant be ordered to pay the Plaintiff's attorney's fees.

10. In this case, as explained below, I find the Defendant's actions give rise to sanctions for criminal contempt. It is clear that a remedy for the Defendant's misconduct cannot be awarded as the "damage has already been done" and cannot be corrected. Additionally, it is clear that the Defendant intentionally and willfully decided not to comply with the Court's Order. In fact, it is clear to the Court that she has no intention of complying with the Court's Order. Because I believe that only the Probate Court can order the Defendant to withdraw the improper claims against the Estate, I believe this Court cannot order a coercive sanction with regard to those claims. As will be outlined in more detail below, I find that the Plaintiff has proven criminal contempt beyond a reasonable doubt.

11. In this matter, the parties were before the Court on July 21, 2015 asking the Court to approve a

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mediated settlement agreement. David Harwell personally appeared at the hearing with his attorney of record. The Defendant appeared by and through her executed and notarized Affidavit of Non Appearance, and the Defendant was represented at the hearing by her retained attorney. As a result of that hearing, Judge Spruill issued the Order referenced above approving the parties' agreement.

12. Defendant now contends that she did not understand the contents of the agreement nor the Affidavit of Non Appearance, and did not understand that an Order would be issued as a result of the hearing. I find the Defendant's testimony in this regard to be completely and totally not credible. Defendant contends that she did not receive a copy of the Order until months later when she requested a copy of her file from her attorney, Julaan Derrick. This testimony, too, is not believable. In fact, Ms. Derrick testified that the Defendant picked up the Order from her office and that two settlement checks from David Harwell (one for $75,000.00 and one for $1,000.00) were attached to the Order and I find that testimony to be credible.

13. Further, Defendant's testimony regarding her lack of understanding of the agreement is contradicted by the fact that she understood she was to receive $76,000.00, the deed to a paid for mountain house and personal belongings, and was to be named beneficiary of David Harwell's legislative retirement pension. She has admitted receiving all of those items and funds. She made inquiry as to her beneficiary status and she took all necessary steps to accomplish this which clearly shows she intended to follow the Order as it benefitted her. It was only after the death of David W. Harwell that the Defendant claimed she did not understand the agreement.

14. I find the Defendant to be intelligent. She testified that she previously owned and ran a business, "studied the law" on occasion, and is currently managing a business in North Carolina. It is clear that the only time she does not understand this agreement is when it does not benefit her.

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15. I find the Defendant was not credible. On the other hand, I find the testimony of the Personal Representative, his brother, the funeral director, the postal inspector and Julaan Derrick to be credible, and their testimony was corroborated by the exhibits in this record.

AS TO THE PARTIES' INCOME TAX REFUNDS

16. In the parties' Court approved agreement, the parties agreed to file joint income tax returns for the year 2014, and to "proportionally share any refund they may receive." Plaintiff contends that the Estate of David W. Harwell should be entitled to receive 94% of the tax refund of $39,799.00, and that Defendant should receive 6% based upon the fact that Harwell earned 94% of the income for that year and Defendant earned 6%. Defendant, on the other hand, contends that she should be entitled to the entire refund, as the tax return contained various deductions that she contends the parties were able to use for that tax year.

17. After carefully considering the evidence before the Court, particularly Plaintiff's Exhibit #10, it is clear that the Defendant had no intention of complying with the Court approved agreement, and was instead, demanding the entire tax refund. The term "proportional" clearly means that the refund would be pro-rated based upon the parties' relative incomes to one another, without regard to any deductions shown on the income tax return.

18. I find that the Defendant's intentional failure to cooperate with the Personal Representative on this issue is a willful violation of this Court's Order and is in criminal contempt of this Court. Plaintiff has proven this contempt beyond a reasonable doubt. Plaintiff's Estate is entitled to receive the sum of $37,411.06 of the income tax refund, and Defendant is entitled to receive $2,387.94 of same. As to this issue, Defendant is required to execute any documents necessary to accomplish this division. This requirement, however, is not a purge to the active service of her sentence of incarceration. In the

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event that Defendant fails or refuses to execute any document necessary to accomplish this division, I hereby authorize the Clerk of Court for Horry County to execute same on her behalf. The Personal Representative is also authorized to execute all documents necessary to accomplish this division.

AS TO THE RESTRAINING ORDERS

19. The Court approved agreement includes the following restraining orders. "The parties shall be mutually restrained from disparaging the other party, or any member of the other parties' family, including children, children's spouses, and grandchildren in any manner. The parties are further restrained from contacting or communicating with the other."

20. Although restraining orders as cited above are unusual, the terms of them are crystal clear. These restraining orders do not terminate on the death of David Harwell, and remain in place as they relate to the Defendant herein. It is very clear to the Court that the Defendant understood these restrictions, yet intentionally and purposefully violated them.

21. Specifically, the Defendant has disparaged the Personal Representative, who is the Deceased's son, by accusing him of stealing funds and mail for which she provided no evidence of such, other than her own self-serving testimony. She also accused him of intentionally providing false information in the preparation of decedent's death certificate, notwithstanding the testimony of both the funeral home director and the Personal Representative's brother, both of whom testified to the contrary. Additionally, it is clear to the Court that based upon his testimony, it is the funeral director's statutory obligation to provide the information to DHEC, and that family members/personal representatives have no ability or duty to deal with DHEC regarding this issue in any fashion. I find beyond a reasonable doubt that the Defendant has intentionally violated this Court's restraining order by making the baseless and disparaging allegations and that she is in criminal contempt of this Court for doing so.

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22. Additionally, the Defendant admits appearing at the hospital to see the Decedent prior to his death, in violation of the restraining order prohibiting contact or communication with the other party. She appeared at the hospital, and while they were not in agreement with her being there, the Decedent's sons allowed her to see the Decedent for a few minutes and then asked that she leave. She then refused to leave until security was called and she was asked to do so by the hospital's security guard. Again, this behavior is in violation of this Court's Order and is an intentional violation of same. I find the Defendant to be in criminal contempt of this court for this behavior also, and find same beyond a reasonable doubt.

23. The aforementioned restraining orders also clearly prevent the type of behavior that the Defendant engaged in relating to David Harwell's funeral and funeral arrangements. Although the Defendant was restrained as outlined above, the Defendant also waived any interest she may have regarding the estate of the other. During the negotiations between the parties, the Defendant requested (See Plaintiff's Exhibit 1) that she be treated as the Decedent's wife at his funeral, that she be allowed to participate in the funeral as his wife, and that she be listed as the wife in the obituary. I have never seen such a request, but clearly that request was denied as it was not included in the mediated agreement. Instead, various restraining orders were put in place to prevent communications between the parties, and the Defendant with the Decedent's family.

24. Contrary to these provisions, Defendant appeared at the funeral home demanding to see David Harwell's body. Additionally, she threatened the Personal Representative with "controversy" if her demands were not met. (See Plaintiff's Exhibit 11) Lastly, she demanded that the funeral home list her as the wife in their obituary. This was not done, so the Defendant ran her own obituary listing herself as the wife. This obituary was clearly not authorized by the

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family. The Defendant's behavior in this regard is despicable and clearly showed no respect for the Decedent or his family. In fact, the visitation and funeral service were moved to a private location to prevent the Defendant from causing a scene at the funeral. The Defendant was clearly not to be a part of the process and should not have caused such disruption to the family of the Decedent.

25. I find the Defendant's actions to be in willful violation of this Court's Order and find her in criminal contempt of court for same, and find this beyond a reasonable doubt.

AS TO THE CELLULAR TELEPHONE

26. The Court approved agreement provided that "the wife shall take all steps necessary to release the husband's cell phone number from her plan within 30 days of the approval of this agreement." Instead of complying with this provision, the Defendant refused to release the cell phone number, reported the phone as stolen, and demanded return of the phone.

27. Once again, the Defendant's actions are in willful violation of this Court's order and I find her to be in criminal contempt for same, and find this beyond a reasonable doubt.

AS TO OTHER VARIOUS VIOLATIONS

28. Plaintiff also alleges in his Complaint for Contempt a number of additional violations against the Defendant, including her alleged attempts to steal mail from the Decedent and the Estate, receive funds from an IRA account that was not awarded to her, and for filing unauthorized change of address forms having the Decedent's mail forwarded to her address. Obviously, the Personal Representative needed the mail in order to properly administer his father's estate, and clearly he was not receiving it. Instead, because of the Defendant's actions, the mail was either being held by the post office or sent to the Defendant's

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mailing address.

29. After the Court approved the parties' mediated agreement, the Defendant executed various change of address forms, having her mail and the Decedent's mail sent to her personal post office box in Myrtle Beach, South Carolina. One of the change of address forms was executed while the Decedent was in the hospital on a respirator, and another one was executed long after he passed away. Additionally, after his death, the Defendant contacted Decedent's financial planner and attempted to obtain information regarding an IRA account in which she had no interest.

30. Although the above actions were in bad faith and were clearly vindictive and self-serving, the Court's Order does not specifically prohibit the Defendant from attempting to divert the Decedent's mail, nor does it specifically mention the IRA account she was attempting to access. As a result, I do not believe the Court can hold her in contempt of the Order.

31. However, her actions clearly indicate that the Defendant has no interest whatsoever in complying with the mediated agreement or Order, and she has continued to attempt to gain assets that were not to be hers under the agreement.

32. In order to clarify and correct the problems that clearly have occurred with regard to the Decedent's mail, I find and order that all mail currently being held by the Post Office for 2208 Timberlane Drive, Florence, South Carolina and 312 Canal Street, North Myrtle Beach, SC, be immediately delivered to the Personal Representative of the Estate of David W. Harwell. Additionally, any mail addressed to either of these mailing addresses shall also be delivered to the Personal Representative at 1389 Lazar Place, Florence, SC 29501.

33. Lastly, as it relates to this issue, I hereby restrain and enjoin the Defendant from executing any additional change of address forms relating to the Timberlane and Canal Street residences, or from taking any action in an attempt to gain access to the

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Decedent's mail.

AS TO THE DEFENDANT'S CLAIMS AGAINST THE ESTATE OF DAVID HARWELL

34. Paragraph 12 of the mediated and court approved agreement provides as follows: "both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other."

35. After the death of David W. Harwell, the Defendant herein filed a number of claims against his Estate. Specifically, the Defendant has filed claims in the Probate Court asking that the Certificate of Death be modified to show her as a "surviving spouse", and that she be granted an "elective share as spouse" and be paid the sum of $3,100,000.00 from the estate. She is also asking that she be reimbursed for the cost of running her unauthorized obituary.

36. Although it is clear to the Court that these claims have absolutely no merit whatsoever based upon the waiver of estate contained in the Family Court Order, I do not believe this Court has the authority to require her to withdraw the claims. Only the Court where these claims are pending would have the authority to order dismissal of those claims, and hopefully that will take place expeditiously, as she has clearly waived them in the Court-approved agreement. The Defendant had the advice of very competent counsel at the time this agreement was signed and approved, and additionally had the assistance of a retained CPA at the time the agreement was negotiated and signed. The Defendant either knew or should have known of the assets of their marriage, and clearly had the opportunity to know that at the time she signed the mediated agreement. Additionally, in the court-approved agreement, the Defendant clearly waived any right she may have in and to the Estate of David W. Harwell, and I find that she clearly understood that waiver and understood she would be entitled to receive nothing from that Estate. In fact, her retained Probate Court attorney testified to such on the first day of this hearing.

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37. I do not believe that this Court can hold the Defendant in contempt of court for filing these frivolous claims, and therefore deny Plaintiff's request that she be held in contempt for same.

AS TO DEFENDANT'S CONTEMPT OF COURT

38. After having heard this matter for nearly two days, it is clear to the Court that Defendant has willfully and intentionally violated this Court's Order in a number of specific regards. She has done so in a flagrant manner that was designed to cause significant misery to the family of the Decedent herein, and continues to do so. I find that Defendant's behavior constitutes criminal contempt of this Court and warrants a sanction of incarceration. I find that the Defendant should be incarcerated in the Horry County Detention Center for a definite period of 45 days.

ATTORNEY'S FEES

39. This Court has authority and jurisdiction to award attorney's fees and costs in this type of action. In awarding attorney's fees and costs, the Family Court should consider the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, professional standing of counsel, contingency of compensation, beneficial results obtained, and the customary legal fees for similar legal services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991) and *Atkinson v. Atkinson*, 279 S.C. 454, 309 S.E.2d 14 (Ct. App. 1983) Additional factors to be considered include the ability of the parties to pay and the effect of attorney's fees on each party's standard of living. *Mitchell v. Mitchell*, 283 S.C. 87, 320 S.E.2d 706 (1984) An award of attorney's fees is generally discretionary with the Trial Judge. *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988).

40. Plaintiff is requesting an award of attorney's

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fees and costs as a result of pursuing this Rule to Show Cause. Plaintiff's fees as submitted are clearly reasonable. Additionally, the Plaintiff has prevailed on many of the issues in this matter, and the Defendant has the clear ability to contribute to these attorney's fees. She received $75,000.00 under this agreement, as a well as a paid-for mountain home worth a significant amount of money. The Defendant also testified as to her current income, and I find she clearly has the ability to pay. Furthermore, the Court is aware of the professional standing of the Plaintiff's counsel, and clearly there has been substantial time, preparation, and attention devoted to this case and presentation of multiple witnesses.

41. I have considered all of the *Glasscock* factors and accordingly find that the Plaintiff is entitled to a reasonable award of attorney's fees and costs and that Defendant has the ability to pay them. I therefore find that the Defendant shall pay to Kevin M. Barth, Post Office Box 107, Florence, South Carolina, 29503, the sum of $25,000.00, and shall do so within 60 days of her release from incarceration. I note that the $25,000.00 sum constitutes only part of the attorney's fees and costs incurred by the Plaintiff in this matter.

ACCORDINGLY, IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Defendant be held in criminal contempt and sentenced to incarceration in the Horry County Detention Center for a definite period of forty-five (45) days.

2. That Defendant be required to execute all documents necessary to accomplish the division of the parties' income tax refund, as outlined above. If she fails to do so the Clerk of Court may execute the documents in her place. Additionally, that the Personal Representative be authorized to execute all documents necessary to accomplish same.

3. That the Defendant be restrained and enjoined from executing any further change of address forms, or

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interfering in any fashion with the Decedent's mail.

4. That the Post Office be authorized to deliver all mail currently being held for the residences located at 2208 Timberlane Drive, Florence SC, and 312 Canal Street, North Myrtle Beach, SC to R. Bryan Harwell, as Personal Representative of the Estate of David W. Harwell, and to mail same to 1389 Lazar Place, Florence SC, 29501.

5. That the Defendant be required to pay attorney's fees and costs as outlined above.

AND IT IS SO ORDERED!

MELISSA J. BUCHANNON
PRESIDING FAMILY COURT JUDGE
OF THE FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

7-20, 2016

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT, AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT, OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT FOR ONE (1) YEAR, A FINE OF $1,500.00, A PUBLIC WORK SENTENCE NOT TO EXCEED 300 HOURS OR ANY COMBINATION THEREOF.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

David W. Harwell, et al)
Plaintiff,)
v.)
Deborah B. Harwell)
Defendant.)

JUDGMENT IN A
FAMILY COURT CASE

Docket No. 2015-DR-26-691

Submitted by: KEVIN M. BARTH	Attorney for o Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☐ This action came to trial, hearing or was resolved by consent and an order was rendered.

o This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP
☐ Rule 43(k), SCRCP ☐ Family Court Benchmark
o Other: Order Denying Defendant's Motion to Reconsider and New Trial

IT IS ORDERED AND ADJUDGED: ■ See attached order; ☐ Statement of Judgment by the Court:
☐ Additional information for Clerk:

ORDER INFORMATION

This is a ☐ Temporary o Final order. If Final, does this order end the case? o Yes ☐ No
Support o is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.
Case number under which support is paid if different from this one:
This order involves the immediate ☐ issuance ☐dismissal of a bench warrant, or o does not apply.
o The following motions are ended by this order (include motion filing date): Defendant's Motion to Reconsider and for New Trial
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add : ☐ dismiss ☐ add :

INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

Family Court Judge — Judge Code: 4175 — Date: 9-21-16

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20___ to attorneys of record or to parties (when appearing pro se) as follows:

_____ _____
_____ _____
_____ _____

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEYS FOR THE DEFENDANT(S)**

_____
CLERK OF COURT

Court Reporter:

Custodial Parent (if applicable):

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE FAMILY COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE #: 15-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell, Plaintiff, v. Deborah B. Harwell, Defendant.	)	**ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER AND FOR NEW TRIAL**

DATE OF HEARING..... SEPTEMBER 14, 2016
TRIAL JUDGE..... MELISSA J. BUCKHANNON
COURT REPORTER..... SALLIE BETH TODD
PLAINTIFF'S ATTORNEY..... KEVIN M. BARTH
DEFENDANT'S ATTORNEY..... DESA BALLARD
GUARDIÁN *AD LITEM*..... NONE

This matter is before the Court pursuant to Defendant's Motion to Reconsider and For New Trial By Defendant dated August 1, 2016 and Defendant's Supplemental Motion to Reconsider dated August 29, 2016. Both attorneys of record appeared at the hearing and presented extensive arguments on the respective positions.

Plaintiff alleges that the Defendant's Motion was not filed in a timely fashion in that it was dated on the eleventh (11th) day after receipt of the Contempt Order. The tenth (10th) day was Sunday, July 31, 2016, thus making the Motion due on or

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before Monday August 1, 2016. Additionally, Plaintiff contends that the Motion was not timely filed in that it was not filed within ten (10) days of the imposition of the Defendant's sentence of incarceration, as required by the South Carolina Rules of Criminal Procedure. The Motion was filed within ten (10) days of receipt of the detailed Contempt Order filed on July 20, 2016. I find the Motion to be timely filed and deny Plaintiff's request to dismiss the Motion as untimely.

SCRCP 59 provides as follows:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. ... In non-jury actions the motion shall be made not later than 10 days after the receipt of written

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notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.

"The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct.App.1989); *see also Boozer v. Boozer*, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct.App.1988) (stating the court of appeals has no power to review circuit court's ruling unless it rests on basis of fact wholly unsupported by evidence or is controlled by error of law). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Umhoefer*, 298 S.C. at 224, 379 S.E.2d at 297. *Brinkley v. S. Carolina Dep't of Corr.*, 386 S.C. 182, 185-86, 687 S.E.2d 54, 56 (Ct. App. 2009).

Defendant has raised a number of grounds that she contends entitle her to reconsideration of the Contempt Order and for a new trial on the issue of contempt of court. The undersigned will address each one of those below:

1. The family court lacked jurisdiction to enforce a

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contempt order through a representative of a deceased party. It is respectfully asserted that the right to enforce a contempt action regarding contact or communication was a personal right of the decedent, and thus ended at the time of the decedent's death.

Defendant contends that this Court lacks jurisdiction to hear this matter, including the contempt portion, based upon the death of David W. Harwell. I find that this Court does have jurisdiction to hear the matter, and in fact, would be the only Court who has jurisdiction to hear it. S.C. Code Ann., Section 63-3-530(13) and (30). Specifically, the Personal Representative has the legal authority to pursue claims on behalf of a decedent and has the statutory obligation and fiduciary duty to protect the estate and its beneficiaries. This matter was before the Court for two basic purposes. First, the Court was being asked to finalize the equitable division portion of the case (dividing the income tax refund), and was being asked to enforce the terms of the Court approved agreement by holding the Defendant in contempt of this Court's Order. For example, Plaintiff alleged that the Defendant was attempting to obtain estate assets (mail, dividend checks, IRA account, etc.) in an attempt to interfere with the administration of the estate and in violation of the Court's Order approving an agreement whereby she waived her interest in the estate.

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I find that the only appropriate forum for determining these issues is the Family Court, and the only appropriate party available to pursue the matter on behalf of David W. Harwell would be his duly appointed Personal Representative, R. Bryan Harwell. Based on the foregoing, I deny this ground for a new trial.

2. The family court lacked jurisdiction to order a party to a family court order to be restrained or enjoined from contact or communication with persons who were not parties to the family court action.

For clarification purposes, the Order approving the agreement provided as follows: "the parties shall be mutually restrained from disparaging the other party, or any member of the other parties' family, including, children, children's spouses, and grandchildren. The parties are further restrained from contacting or communicating with the other." In other words, the "no contact" order was between David W. Harwell and Deborah Harwell. The restraining order against disparaging comments related to the parties and their respective family members.

I do not believe that this particular ground is properly before the undersigned. Specifically, it appears that the Defendant is attempting to collaterally attack the Order of James Spruill, III, filed July 21, 2015 which approved the

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parties' Mediated Agreement. That Order was neither appealed from nor modified and is the Order of this Court. The matter before the undersigned was the enforcement of that Order. To the extent that Defendant is attempting to attack Judge Sruill's Order, I deny this ground for reconsideration or a new trial.

As a separate sustaining ground for this denial, the Defendant entered into a Mediated Settlement Agreement, and voluntarily asked the Court to approve the agreement. A portion of the agreement included a restraining order which restrained the parties from communicating with one another as well as certain members of the parties' respective families. Although the Court may not have ordered such a restraining order, the Court certainly had the authority to approve an agreement between the parties which included a provision such as this. Once the Court approved this agreement/provision, the Defendant was, and is, required to comply with it. The undersigned found, beyond a reasonable doubt, that the Defendant intentionally violated this provision of the Court's Order and therefore found her in contempt of Court.

3. The family court lacked jurisdiction and erred in imposing contempt as a result of contact with/to adult persons who were not parties to the family court action.

The Defendant was actually held in contempt of Court for

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violating the provision of the agreement restraining her from making disparaging comments about members of Judge David Harwell's family members, not because of any violation of a "no contact" order.

As outlined above in paragraph two (2), the parties negotiated an agreement which provided for the restraining orders being complained of. The Defendant asked the Court to approve it, and it was approved. It is true that this Court could not hold a third party in contempt of Court for violating a restraining order such as this (as they were not parties to the Family Court action). However, the Court clearly has jurisdiction to insure that a party to the litigation fully and completely complies with the terms of a Court approved agreement. Based on the foregoing, I deny this ground for a new trial.

4. The family court lacked jurisdiction to order a no contact or communication order in a family court action which sought only separate maintenance and support and division of marital property but which left the marital relationship intact.

I deny this ground for relief based upon the same reasoning outlined above in response to ground number two (2).

5. The family court lacked jurisdiction and erred in imposing contempt on the basis of an order which did not terminate the marital relationship.

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I deny this ground for relief based upon the same reasoning outlined above in response to ground number two (2). More specifically addressing this particular ground, the undersigned would note that agreements are approved in the Family Court on a regular basis when the only relief being sought by the parties is a separation and the approval of a marital settlement agreement. Whether or not the action is for the termination of the marriage itself, the Court has jurisdiction to hear and approve agreements such as the one in this case, S.C. Code Ann., Section 63-3-530(2), as well as the authority to enforce the terms of the agreements.

6. The family court lacked jurisdiction and erred in finding Mrs. Harwell in contempt of court as it related to conduct prior to the death of the decedent, because she remained the lawful wife of the decedent.

Defendant contends in this ground for relief that the Court cannot enforce a "no contact" order between parties that remain husband and wife after the issuance of the Order. If the Defendant is correct in her assertions, temporary restraining orders issued in Temporary Orders, and final orders in separation actions which include restraining orders would be rendered null and void if the parties remain husband and wife. This is not the law in the State of South Carolina.

As an additional sustaining ground for denying this request

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for relief, even if the Defendant had various "rights" as the wife of David W. Harwell, she voluntarily waived those rights by entering into an agreement which included a "no contact" order and then requested that the Family Court approve the agreement.

Parties in litigation waive their rights regularly. In this matter, David W. Harwell waived his right to enforce the Pre-Nuptial Agreement, and settled the matter instead. Likewise, the Defendant waived rights she may have had as his wife, including the right to "contact" him after the parties had been granted the right by Judge Spruill "to live separate and apart from one another". I deny this ground for relief.

7. The family court lacked jurisdiction and erred in finding Mrs. Harwell in contempt of court for visiting her husband at the hospital. She was the legal spouse of the decedent and authorized to be present at the hospital, as well as to direct the medical care of her husband.

This request is also denied, based upon the reasoning outlined in the second paragraph in response to ground number six (6) above.

8. The family court lacked jurisdiction and erred in finding Mrs. Harwell in contempt of court for attempting to attend her husband's funeral. She was the legal spouse of the decedent and legally authorized to make and direct the arrangements for her husband's funeral.

This request is also denied, based upon the reasoning outlined in the second paragraph in response to ground number

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six (6) above.

9. The family court erred in concluding it had jurisdiction to address the Rule to Show Cause on the basis of a reservation in the earlier order which reserved jurisdiction only as to the division of property.

Judge Spruill's Order reserved jurisdiction to issue any subsequent Orders that may have been necessary to accomplish the equitable division portion of this litigation. This reservation has nothing whatsoever to do with the Family Court's authority and jurisdiction to enforce the terms of a Family Court Order. This matter was before the undersigned, partially, to conclude the equitable division of the marital estate and partially to enforce the terms of Judge Spruill's Order. The matter was properly before the Court and this ground for relief is denied.

10. The family court erred in concluding it had jurisdiction to address the Rule to Show Cause because the family court's jurisdiction abated upon the death of the plaintiff.

The death of a party litigant in Family Court abates the pending action as it relates to the granting of a divorce from one another. *Hatchell-Freeman v. Freeman*, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000). It does not abate the action as to other issues that must be dealt with in order to complete the equitable division of the marital estate and to insure full compliance with the terms of the Court's Order by the party who

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is still alive. In this matter, as outlined above, the Court clearly had the authority to deal with the finalization of the equitable division portion of this action. Additionally, it was clear to the Court that the Defendant was attempting to obtain estate assets she had waived an interest in in the mediated settlement agreement. This issue could only be dealt with in the Family Court, and could only be pursued by the Personal Representative of the Estate of David W. Harwell.

Although the Court did not find the Defendant to be in willful violation of the Court's Order as it related to the IRA account, the mail and the dividend checks, etc., the matter was properly before this Court for determination. Based upon the foregoing, I deny this request for relief.

11. The family court erred in concluding that it has personal jurisdiction over the parties since the family court action had abated.

See this Court's findings outlined above in response to grounds numbers nine (9) and ten (10) above.

12. The personal representative of the Estate lacked standing to bring this matter before the court without instituting a new lawsuit, which he also lacked authority to do. The court erred in even addressing the issues presented by the Rule to Show Cause.

See this Court's findings outlined above in response to grounds numbers nine (9) and ten (10) above.

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13. The family court erred in advancing an opinion as to the viability of claims asserted by Mrs. Harwell in other courts, including but not limited to Paragraph 23 of the Order, which findings were not necessary to the court's order, were outside its jurisdiction, and were intended to, and had the effect of, prejudicing Mrs. Harwell's position in other court proceedings.

The issues of equitable division and contempt were properly brought before the undersigned by the Personal Representative as the proper party to do so. One of the issues before the Court involved the Defendant's claims against the Estate of David W. Harwell, which had been waived by her in the Court approved agreement. The Personal Representative is the only party with authority to pursue claims that deal with the Estate and he did so by bringing this matter before the Family Court. As stated earlier, the only Court with jurisdiction to deal with enforcement of a Family Court Order is this Court.

Even though the Court did not find the Defendant in contempt of Court for filing Probate claims against the Estate, the issue was before the Court and needed to be dealt with. The findings included in the Contempt Order were necessary to substantiate the Court's findings on this issue, and to reemphasize the Court's findings that the Defendant's actions were intentional and were designed to interfere with the proper administration of the estate, when she had clearly waived her

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right to any interest in the estate. Based upon the foregoing, the Defendant's request is denied.

14. The court erred in finding Mrs. Harwell in contempt of court, since the order which she purportedly violated did not clearly and expressly identify the circumstances or conduct that was subsequently found to form the basis of the contempt findings.

This request, too, is denied, as the Family Court Order approving the parties' agreement is crystal clear as to what each party was and wasn't to do after the filing of the Final Order. The Defendant clearly understood the agreement, understood exactly what she was to receive under the agreement, and what she was not to receive. She also clearly understood and agreed to the restraining orders which were issued. By her own admissions, she did not comply with the restraining orders, nor the provision regarding the cellular telephone.

15. The court erred in finding Mrs. Harwell in contempt of court since the provision of the order which she purportedly violated terminated at the time of the death of the decedent.

This particular ground is too vague for the Court to specifically address, and therefore denies same on this basis. To the extent that this ground incorporates arguments made above, the undersigned's findings outlined above also apply in support of this denial.

MJB

16. The court erred in basing any finding of contempt on the obituary run by Mrs. Harwell, since she was the surviving spouse of the decedent and authorized to do so.

Whether the Defendant was the legal wife of the decedent does not change the Court's findings in regarding to her failure to comply with the Court's Order. The Court issued an Order that granted the parties to live separate and apart from one another, and approved a mediated settlement agreement entered into by the parties. In the Court approved agreement, the Defendant clearly and unequivocally waived any interest she had in and to the Estate of David W. Harwell. In other words, whatever rights she may have had as the "surviving spouse" were voluntarily waived when Defendant asked the Court to approve the agreement including this waiver. Based upon the foregoing, this request is denied.

17. The family court erred in basing any finding of contempt on the basis of Mrs. Harwell's attempt to attend her husband's funeral, as she clearly had a legal right to do.

See findings regarding ground number sixteen (16) above. This request is denied.

18. The family court erred in basing any finding of contempt on Mrs. Harwell's action as to the decedent's cellular telephone, as the decedent sought no such relief prior to his death, and the personal representative lacked standing to seek the relief, which was personal to the decedent.

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The Court clearly has jurisdiction to enforce the terms of the Court's Orders. Defendant continues to be subject to the jurisdiction of the Court as it relates to the Court's Order approving her agreement. Defendant admitted on the witness stand violating this provision of the Order. Based upon the foregoing, this request is denied.

19. The family court erred in inferring willfulness or disobedience on the basis of conduct referenced in Paragraphs 28 and 29, because the family court's jurisdiction as to Mrs. Harwell, who remained the spouse of the decedent until the time of his death, had no authority to interfere with Mrs. Harwell's status as the wife of the decedent.

Defendant contends that the Court inferred disobedience of the Court's Order in paragraphs twenty-eight (28) and twenty-nine (29) of the Contempt Order. These allegations involve the Defendant's attempt to receive an IRA account that was to belong to the Estate under the Court approved agreement, and her "family change of address" forms filled out with the Post Office after the parties' separation from one another, and after the death.[1]

[1] Defendant completed an "individual change of address" form upon the parties' separation in February of 2015. This form forwarded HER mail from the residences to her post office box. The "family change of address forms", which were completed by her after the issuance of the Court's Order approving the agreement and again after the death of Judge Harwell indicated that the entire family (Judge Harwell and Defendant) had relocated. This resulted in all mail addressed to either of them being forwarded to Defendant's personal post office box. The only person entitled to receive Judge Harwell's mail during his life was Judge Harwell, and after his death, only his Personal Representative.

MJB

Having found that the Order did not specifically reference the IRA account and the decedent's mail, the undersigned did not believe the Defendant could be held in contempt of court for violating specific provisions of the Court's Order. On the other hand, even though the Defendant was not held in contempt of Court, it was clear to the Court that these actions were taken in an attempt to retrieve an account Defendant was not to receive in the settlement, and to divert the decedent's mail to her post office box. These actions did interfere with the administration of the Estate, and caused the Post Office investigators to become involved.

Whether the Defendant was the "surviving spouse" of the decedent, she was not entitled to receive his mail, nor was she entitled to any portion of the IRA account she was trying to access. The Court was required to recite these facts and findings in order to substantiate its holding that Defendant was not in contempt of Court for these actions. These findings also relate to the restraining order issued against the Defendant relating to the mail issue. Based on the foregoing, this request is denied.

20. The family court erred in ordering the United States Post Office to disobey instructions provided to them by Mrs. Harwell, who remained the spouse of the Plaintiff after issuance of the court's "final decree" with the rights and obligations inherent in her status as a wife.

MJB

The Contempt Order in this matter, paragraph thirty-two (32), required the United States Postal Service to provide all of decedent's mail for the Timberlane Residence and the Canal Street residence to the Personal Representative of the Estate. The Postal Service has not objected to this finding, and the Defendant therefore has no standing to object to same. This request is therefore denied.

21. The family court erred in enjoining Mrs. Harwell from "executing any additional change of address forms relating to the Timberlane and Canal Street residences or from taking any action in an attempt to gain access to the Decedent's mail." The family court has no jurisdiction to issue that order.

Defendant contends that paragraph thirty-three (33) of the Contempt Order has the effect of possibly preventing the Defendant from obtaining her own mail, if she is not allowed to fill out any more change of address forms. Clearly the Court has no interest in preventing the Defendant from obtaining her OWN mail. As a result, paragraph thirty-three (33) of the Contempt Order is modified to prevent the Defendant from executing any change of address forms in an attempt to obtain mail that belongs to the Estate of David W. Harwell. She would be entitled to file "individual change of address" forms if one would be needed to obtain her OWN mail.

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22. The family court erred in finding that the actions of Mrs. Harwell were willful and intentional violations of the Court's order and that her conduct was flagrant and "designed to cause significant misery to the family of the Decedent herein, and continues to do so." Mrs. Harwell was and is a member of "the family of the Decedent herein" and no prior order of the family court establishes otherwise. The evidence was insufficient to support the court's finding.

The undersigned carefully listened to 1 ½ days of testimony, and reviewed the numerous exhibits introduced into evidence. After considering all of this, including the credibility of the witnesses, the undersigned found that the Defendant willfully violated the Court's Order. There is substantial evidence in this record to justify these findings, and this request is therefore denied.

23. The family court erred in awarding attorney fees to the personal representative of the estate, who had no standing or authority to bring an action for contempt against Mrs. Harwell. Not only did the family court lack jurisdiction to award attorney's fees to a third party over whom it had no jurisdiction, and no jurisdiction to hear or adjudicate the issues presented, but the court's clear misunderstanding of Mrs. Harwell's rights and obligations as to her late husband were disregarded by the family court.

As outlined earlier in this Order, the matter is properly before the Court. The Personal Representative of the Estate of David W. Harwell is the proper party to bring this matter before the Court, and this Court has jurisdiction over the Defendant

MJB

regarding the issues including her compliance or non compliance with the Court's Order.

S.C. Code Ann. § 63-3-530(38) grants the Family Court exclusive authority to "to hear and determine an action where either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and permanently. In this action the court shall allow a reasonable sum for the claim if it appears well-founded. Suit money, including attorney's fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court."

In other words, S.C. Code, Ann. Section 63-3-530(38) allows this Court to award attorney's fees in any matter before the Court where such an award is appropriate. There is no requirement that the parties be husband and wife. As stated earlier, the Estate was the proper party to bring these issues before the Court. Even without a finding of contempt of court against the Defendant, this Court would have jurisdiction to award fees and costs solely relating to the equitable division issue. This is a proper case in which to award attorney's fees and costs, and the undersigned would note that the Court did not award the entire fees being requested by the Plaintiff. Based upon the foregoing, this request is denied.

MJB

24. The family court erred in relying upon the family court precedent set forth in Paragraph 39 of its order (with reference to the award of attorney fees), in that this dispute was not among spouses and the prior authorities cited were inapplicable.

See the findings outlined above regarding ground number twenty-three (23). This request is denied.

25. The family court erred in exercising jurisdiction in matters that were outside its jurisdictional authority.

This ground is denied, in that it raises no specific ground upon which relief can be granted.

26. The family court erred in finding that the attorney fees sought by the personal representative and his counsel were reasonable, when the family court lacked jurisdiction over the issues presented at all.

See the findings outlined above regarding ground number twenty-three (23). This request is denied.

27. The family court erred in finding Mrs. Harwell to be in criminal contempt and in sentencing her to incarceration for the reasons set forth herein.

Defendant contends that the Court erred in finding the Defendant to be in criminal contempt of this Court. She alleges that her actions were all taken in good faith, that the Plaintiff did not specifically request a finding of criminal contempt, that the Defendant was never put on notice that she could be found in criminal contempt of Court, and that the June Bench Order ended the Court's authority to take further action

MJB

in this matter. These arguments do not entitle the Defendant to any requested relief.

The Defendant, at the time the agreement was approved, executed an Affidavit of Non Appearance in which she acknowledged and recited that she understood the parties would be subject to the contempt sanctions of the Court, "which could include incarceration for a period of up to one year, a fine of up to $1,500.00, community service, or any combination of the above". Obviously, the Defendant knew of the possible sanctions for willful violations of this Court's Orders.

Additionally, a party is not required in its pleadings to request a finding of criminal contempt. The pleadings simply must outline the provisions of the Order which have allegedly been violated. It is then up to the Court to decide if there have been violations, and if so, the appropriate sanctions to be meted out. The Court's options include civil contempt and criminal contempt as outlined in the Contempt Order. The undersigned determined that the most appropriate sanction in this case would be a sentence of confinement for criminal contempt.

28. The family court erred in ordering Mrs. Harwell to execute documents related to the income tax return, in that the family court lacked jurisdiction to address this issue and the personal representative had no standing to bring this matter to the family court.

MJB

At the hearing in this matter, the Defendant withdrew this request for relief.

29. The family court erred in directing Mrs. Harwell or the United States Post Office to take any action of any kind with respect to the decedent or his mail.

At the hearing in this matter, the Defendant withdrew this request for relief.

30. The family court lacked jurisdiction to issue its order filed July 20, 2016. The court had already (sic) Defendant to be in civil contempt by order dated June 16, 2016. The July 20, 2016 added factual findings and attempted to change the court's ruling. The June 16, 2016 order concluded the matter, did not indicate a more detailed order was to follow. The court's jurisdiction over the matter ended with the issuance of the June 16, 2016 order.

At the conclusion of the hearing on June 16, 2016, the Defendant was sentenced to a period of incarceration for a definite period of time. In order for the Defendant to be processed into the detention center, a Bench Order must be issued outlining the sentence. The undersigned issued a Bench Order finding the Defendant to be in "civil contempt" and sentencing her to forty-five (45) days in jail.

A copy of the Bench Order was provided to Defendant's counsel at the conclusion of the hearing, and no objection was made by him, nor was a Motion to Reconsider filed on her behalf.

MJB

The reference to "civil contempt" was clearly a scriveners' error, since the Defendant was sentenced to confinement for a definite period of time with no ability to purge the active service of the sentence. Additionally, the Court dictated its findings and conclusions into the record and on page 119 of the transcript requested that Kevin M. Barth, Esquire, prepare a detailed Order and provide a copy of same to Defendant's attorney prior to submitting it to the Court for signing and filing. The Court clearly anticipated a detailed Order to be provided to the Court after the hearing. The matter remains under advisement until such time as the Order has been signed and filed by the Judge.

The Court had jurisdiction to issue the July 20, 2016 Order and properly executed and filed same. Of note is the fact that Defendant argues that the final order in this matter was issued on June 16, 2016. If that were to be the case, Defendant's Motion for New Trial would not be timely. The Motion is timely because it was filed within ten (10) days of the issuance of this Court's Contempt Order.

ATTORNEY'S FEES

This Court has authority and jurisdiction to award attorney's fees and costs in this type of action. In awarding

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attorney's fees and costs, the Family Court should consider the nature, extent and difficulty of the services rendered, the time necessarily devoted to the case, professional standing of counsel, contingency of compensation, beneficial results obtained, and the customary legal fees for similar legal services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991) and *Atkinson v. Atkinson*, 279 S.C. 454, 309 S.E.2d 14 (Ct. App. 1983) Additional factors to be considered include the ability of the parties to pay and the effect of attorney's fees on each party's standard of living. *Mitchell v. Mitchell*, 283 S.C. 87, 320 S.E.2d 706 (1984) An award of attorney's fees is generally discretionary with the Trial Judge. *Stevenson v. Stevenson*, 295 S.C. 412, 368 S.E.2d 901 (1988).

Plaintiff is requesting an award of attorney's fees and costs as a result of defending this Motion to Reconsider and for New Trial. Although the majority of the items being requested by the Defendant were not successful, I do not find that she should be required to pay any of the Plaintiff's attorney's fees or costs associated with this matter. Each party shall therefore be responsible to pay their respective attorney's fees and costs.

ACCORDINGLY, IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Defendant's Motion to Reconsider and For New

MJB

Trial by Defendant is hereby denied, except as outlined in paragraph twenty-one (21) above.

2. That paragraph thirty-three (33) of the Contempt Order filed on July 20, 2016 be modified as outlined above.

3. That unless specifically modified herein, the Court's Contempt Order filed on July 20, 2016 remains in full force and effect.

4. That Plaintiff's request for an award of attorney's fees, costs and disbursements is hereby denied.

AND IT IS SO ORDERED!

MELISSA J. BUCHANNON
PRESIDING FAMILY COURT JUDGE
OF THE FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

9-21, 2016

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
David W. Harwell, et al,	)	
Plaintiff,	)	
v.	)	**SUPPORT INFORMATION SHEET**
Deborah B. Harwell,	)	
Defendant.	)	
	)	Docket No. 2015-DR-26-691

Check appropriate box:

O No spousal or child support ordered. (No other items should be completed.)

G If support is ordered to be paid directly or through the Court, **you must complete BOTH pages** (as applicable).

Obligation Type	**Child Support**	**Spousal Support**	**Other**
Amount	$	$	$
Collection Costs (5%)	$	$	$
Payment Frequency			
Payment Start Date			
Weekly	G	G	G
Bi-Weekly	G	G	G
Monthly	G	G	G
Semi-monthly (1st and 16th)	G	G	G
Semi-monthly (15th and 30th)	G	G	G
Total Arrearage Amount	$	$	$
Wage Withholding			
Required by S.C. Code Ann. ' 63-17-1420	G	G	G
Ordered	G	G	G
Not Ordered	G	G	G

Name of Custodial Parent (if applicable):

*******OBLIGOR=S DESIGNATION STATEMENT: PAYMENT OF COURT COSTS*******

I acknowledge that S.C. Code Ann. ' 63-3-370 requires that I pay and the Family Court has ordered that I pay court costs in an amount equal to five (5) percent of my support payment made through the Clerk of Court or the centralized wage withholding system. I owe and will pay these costs in addition to my support obligation.

To meet my duty to pay court costs, I designate an amount equal to five (5) percent of the support payment I make to be applied and distributed in payment of court costs, not support.

I acknowledge that the Clerk of Court or, if payments are withheld from my income, the centralized wage withholding system to deduct the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: _____, 2016

Signature of Person paying Support**

*****NOTE TO CLERK: FILE AND PROCESS THIS FORM EVEN IF SIGNATURE OF PERSON PAYING SUPPORT IS NOT PROVIDED.*****

SCAA 446 (4/2010)

IDENTIFYING INFORMATION ON THIS PAGE

A. OBLIGEE/PAID TO:

Name:
Address:
City: State: Zip:
Email Address: Phone:
SSN: Gender: __ Race: __ Height:__ Weight:
Date of Birth: Scars:
Driver=s License Number: Driver=s License Issuing State:
Employer:
Employer Address:

B. OBLIGOR/PAID BY:

Name:
Address:
City: State: Zip:
Email Address: Phone:
SSN: Gender: __ Race: __ Height:__ Weight:
Date of Birth: Scars:
Driver=s License Number: Driver=s License Issuing State:
Employer:
Employer Address:

C. CHILDREN

CHILDREN'S NAMES	DATE OF BIRTH	SSN
1.		
2.		
3.		
4.		
5.		
6.		

PREPARED BY TITLE DATE

SCCA 446 (4/2010)

RECEIVED
via US mail 4.18.17

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-21-1433

FILED
2017 APR 12 PM 2:45
FLORENCE COUNTY, SC

Deborah B. Harwell
PLAINTIFF(S)

v.

Robert Bryan Harwell, et al
Law Office of Diedra W. Edwards PA et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Robert Bryan Harwell et al.	Deborah B. Harwell	$ 40,000.00
" " " "	Law off. Deborah W. Edwards P.A et al.	$ 5,000.00
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
	2135	4/6/16

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Apr, 20 17 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of Apr, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard
PO Box 6338 W. Columbia SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

K. Barth - PO Box 107 Florence SC - Hand Del.
Gena P. Erwin PO Box 2527 Florence SC 29503
Barbara Wagner PO Drawer H Charleston SC 29402

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P. O'Hara

CLERK OF COURT

M. Dawes Cook Jr. PO Drawer H
Charleston SC 29402

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) C.A. No. 16-CP-21-1435

Deborah B. Harwell)
Plaintiff,)
)
v.) **ORDER**
)
Robert Bryan Harwell, individually)
And as the Personal Representative)
Of the Estate of David W. Harwell;)
And the South Carolina Department)
Of Health and Environmental)
Control, Div. of Vital Records)
Defendants,)
)
v.)
)
Law Office of Deidre W. Edmunds,)
P.A/ and Deidre W. Edmunds,)
Individually,)
Third Party Defendants.)

FILED
2017 APR 12 PM 2:45
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this court on a motion by the Defendant Robert Bryant Harwell, individually and as the Personal Representative of the Estate of David W. Harwell seeking sanctions against Deborah B. Harwell, Deirdre W, Edmonds and the Law Office of Deidre W. Edmonds, P.A. . The sanctions are sought under Rule 11 of the South Carolina Rules of Civil Procedure (SCRCP) and the South Carolina Frivolous Civil Proceedings Sanctions Act as contained in S.C. Code Ann., Section 15-36-10, et.seq. Sanctions are sought against Deborah B. Harwell for the filing of legal claims and actions by her against the Estate of David W. Harwell

and its Personal Representation Robert Bryan. The legal actions complained of include the filing by Deborah B. Harwell, pro se, of Probate Court creditor's claims for payment for the publication of an obituary, money from the Estate for alleged claims involving a prenuptial agreement, and a claim of entitlement to an elective share. There is a claim against Deidre Edmonds and her law firm for refiling the above reference creditor's claims in the Probate Court, for filing actions to enforce the creditor's claims and for the filing of an action in the Probate Court for the amendment of the death certificate of David W. Harwell.

STATEMENT OF FACTS

David W. Harwell and Deborah B. Harwell were legally separated and a complete property settlement Order was filed in the Florence County Family Court by Order on July 21, 2015. Thereafter, David W. Harwell died on September 30, 2015.

Deborah Harwell filed, pro se, on January 14, 2016, claims in the Florence County Probate court seeking an "elective share" from the estate of $3,100,00.00 based on a "prenuptial agreement." At the same time she filed, pro se, a claim for $1,440.00 against the estate for reimbursement for the costs of publication an obituary by her.

Mrs. Harwell met with Attorney Edmonds on February 6, 2015, and shown her a copy of the death certificate of David W. Harwell that did not indicate that she was a surviving spouse. She had obtained that copy from the Florence County Probate Court. The death certificate as then written would not have allowed Ms. Harwell to obtain certain retirement and/or social security benefits that may be available to a surviving spouse.

That copy of the certificate indicated that Robert Bryan Harwell was the informant. Thereafter, Edmonds contacted Angie Saleeby, the Director of Vital Records at DHEC to learn

the proper method by which to have the certificate amended. Edmonds was told that the informant on the certificate could have it corrected or she would have to obtain a court order directing that it be amended.

At the February meeting she was shown a copy of the Application for Probate or Appointment filed with the Florence County Probate Court on October 12, 2015. That document appeared to have been altered by the whiting out of an entry in the surviving spouse blank of that form. Edmonds did not believe that this was the proper way to report that actual marital status of the decedent to the Probate Court

On about March 1, 2016, Deirdre Edmonds assumed representation of Mrs. Harwell only in the matters involving the Probate Court and her husband's estate. Edmunds did not assume representation of Mrs. Harwell concerning any issue involving the Family Court since she does not practice in that court. Ms. Edmonds filed a petition in the Probate Court on behalf of Mrs. Harwell seeking an adjudication of Deborah as the surviving spouse, and also seeking, the amendment of David Harwell's death certificate so as to have Deborah listed as the Surviving Spouse on the certificate. Ms. Edmonds refiled in the Probate Court the creditor's claims previously filed by Mrs. Harwell, pro se, in the David W. Harwell Estate on March 9, 2016.

In the weeks that followed Edmonds was provided information concerning the death certificate by Kevin Barth, attorney for Bryan Harwell and by subpoena from DHEC. At some point in time Barth offered to have Bryan apply for an amended death certificate should Mrs. Harwell dismiss her claims against the Estate. This offer was rejected by Mrs. Harwell.

The claim filed by Mrs. Harwell for an elective share is barred by the terms of the Property Settlement Order filed in the Family Court. As of that time the Family Court Order had

not been appealed from and no action seeking further relief from that Order had been filed by Mrs. Harwell.

Prio to Mr. Harwell's death, during the spring and early summer of 2015 David W. Harwell and Deborah B. Harwell were negotiating a marital property settlement. On July 21, 2015, in the case of David W. Harwell v. Deborah B. Harwell, 15-DR-26-691, the Horry County Family Court issued an Order approving a mediated separation and property settlement. The agreement was incorporated into the order. The Order stated in part in Paragraph #2 that, "the parties have settled all of the issues arising out of their marriage and of the prenuptial agreement." In Paragraph # 12 the Order stated further, "both parties waive any and all rights that may have in the estate of the other or to make claims upon or against the estate of the other." That Order has never been amended or appealed. It remains the law of their property settlement.

On February 8, 2016 Edmonds was informed of the existence of the pro se claims in the Probate Court filed by Mrs. Harwell. By March 3, 2016, Edmonds had received sufficient information to determine that the pro se claims had been denied by the Personal Representative and that unless an action was begun in the Probate Court to enforce the claims they would be barred by statute and lost. An action on the claims would have to be brought in the Probate Court by March 12, 2016 in order to preserve the possibility of a Rule 60 claim. The action to enforce the pro se claims was filed by Edmonds on March 9, 2016. She states that this was done to protect Mrs. Harwell's right to pursue a Rule 60 reopening of the Family Court Order approving the property settlement agreement, based on her allegations of fraud and misrepresentation of assets by her husband at the time of the mediation. Edmonds claims a lack of expertise in Family Court matters and that she had informed Mrs. Harwell of the need for her to obtain other representation in the Family Court to be able to pursue the Rule 60 Motion.

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At the initial meeting between Mrs. Harwell and. Edmonds, Harwell told Edmonds that she felt that she had been misinformed concerning the assets of her husband at the time that the Property Settlement was negotiated and approved in the Family Court. At some point in time it became apparent to Edmonds that Mrs. Harwell would have to pursue her claims of fraud and misrepresentation concerning the mediated Property Settlement agreement by the filing in the Family Court of a Rule 60 motion to set aside or seek relief from the Order approving and adopting the property settlement agreement. Edmonds claims to have filed her petitions regarding the claims for monetary relief in the Probate Court in order to preserve Mrs. Harwell's ability to seek relief in the Family Court from the Mediated Property Settlement Order. Those probate claims would be deemed abandoned if action is not taken in a timely fashion to enforce them following their disallowance by the Personal Representative. Edmonds refused to assume representation of Harwell in the Family Court matters since she did to believe herself to be competent in those matters.

The actions seeking a monetary recovery from the Estate were filed by Mrs. Harwell in the Probate Court as Creditor's Claims. The Personal Representative of the Estate filed a denial of the claims. Then the Personal Representative on April 1, 2016, filed Motions to Dismiss the Probate Court Petitions and seeking sanctions, attorney's fees and costs because of the alleged frivolous claims and Rule 11 SCRCP violations by Deborah and Ms. Edmunds. The sanctions were requested from both Mrs. Harwell and Attorney Edmonds.

On April 12, 2016, Dawes Cooks appeared as attorney for Edmonds defending her and her firm in the claims filed by the Estate and the personal Representative. On May 3, 2016 Adam Silvernail assumed representation of Mrs. Harwell in the probate matters from Edmonds.

Silvernail later assists Mrs. Harwell in preparing and filing her later pro se pleadings in the Family Court.

There follows in early May various Motions on both sides for dismissal of the claims and actions.

A contempt hearing against Mrs. Harwell was conducted in the Family Court beginning May 20, 2016. An Order was filed on July 21, 2016 by Judge Buckhannon which resulted in Mrs. Harwell being held to be in contempt of Court and incarcerated for a period of time as a result of this contempt.

A hearing on the Motions for Sanctions and the Motions to Dismiss filed by both sides was held before the undersigned on July21, 2016. At that hearing Desa Ballard appeared as counsel for Mrs. Harwell having been hired by her on the day prior to the hearing. At that hearing Ms. Ballard requested additional time in which to familiarize herself with the facts and issues involved in the case and to make an attempt to resolve some of the matters before the court. An Order substituting her as counsel was filed on August 31, 2016.

On August 31, 2016, Mrs. Harwell through her attorney Ms. Ballard filed a partial Stipulation of Dismissal which dismissed the claim for and Elective Share with prejudice and other claims (with the exception of the claim for amendment of the Death Certificate) without prejudice. The issues of Rule 11 and Frivolous Actions sanctions remains open.

CONCLUSIONS OF LAW

1. South Carolina Rules of Civil Proceedure:

Page 06

RULE 11
SIGNING OF PLEADINGS; ATTORNEYS

(a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address..... The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

.....

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

2. <u>Ex Parte Gregory. 378 S.C. 430, 430-437-39, 663 S.E. 2d 46, 50 (2008)</u>

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Wright,* 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature *438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.* <u>Ex parte Gregory</u>, 378 S.C. 430, 437–38, 663 S.E.2d 46, 50 (2008)

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15–36–10 (2005) provides that any

person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being **51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.
Ex parte Gregory, 378 S.C. 430, 438, 663 S.E.2d 46, 50–51 (2008)

3. South Carolina Code of Laws: Section 15-36-10

SECTION 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

4, Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)

"Under Rule 11, the primary purpose of sanctions against counsel is not to compensate the prevailing party, but to 'deter future litigation abuse.' " *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002) (quoting *In re Kunstler*, 914 F.2d 505, 522 (4th Cir. 1990)). The expenses opposing counsel incurs in combatting frivolous claims is an appropriate factor for a court to consider when determining whether to issue a monetary sanction. *In re Kunstler*, 914 F.2d at 522. "[O]ther purposes of the rule include compensating the victims of the Rule 11 violation, as well as punishing present litigation abuse, streamlining court dockets[,] and facilitating court management." *Moore v. Southtrust Corp.*, 392 F.Supp.2d 724, 736 (E.D. Va. 2005) (quoting *In re Kunstler*, 914 F.2d at 522).

Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017)

5. *Jones v. Lott,* 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

"A willful act is one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." (internal quotation marks omitted)); *Jones v. Lott,* 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)

CONCLUSIONS AND RULINGS

As to the pleadings filed by Deborah Harwell. I find that the Creditor's Claims filed pro se by her were filed without merit and frivolous. I have seen no credible evidence or claim that would indicate that Mrs. Harwell was entitled to any money or property from the Estate of David W. Harwell. All such claims were barred by the express terms of the Property Agreement as embodied in the Order of the Probate Court approving and adopting that agreement. Mrs. Harwell appears to have been represented by what appears to be competent counsel at the time that the Family Court approved the terms of the property settlement. She had employed experts to assist her in the negotiation of that agreement. She was fully aware that the agreement and Family Court Order did not allow her to make the claims that she was making. The only possible justification for such action would have been if she was bringing an action to set aside the Order and Agreement, which is an action that she took much later. That Rule 60 motion has now been terminated by the withdrawal of that claim without any credible allegations or evidence presented to advance the claim. It is my further finding that Mrs. Harwell advanced these claims willfully and with a total disregard for the application of the law or the respect due to a valid Court Order affecting the parties before the Court. I find that she was motivated by an ongoing personal dispute with the heirs of David W. Harwell, and her actions were intended to delay the settlement of his estate and to seek a recovery to which she was not entitled. Also, I find no basis for Mrs, Harwell's claim for reimbursement for the obituary which she caused to be published.

As to the claims by Mrs. Harwell for Amendment of the Death Certificate I find that claim to have been justified as stated below.

Concerning the Petition seeking the Amendment of the Death Certificate advanced by Mrs. Harwell and Ms. Edmonds. I find that the relief sought in that action was justified and that

the action was necessary. While it is clear that some of the allegations contained in that petition concerning the alleged actions of the personal representation were false and ultimately found to be without justification, it is my finding that these allegations were the result of what appears to be an almost paranoid belief on the part of the parties to these actions concerning the evaluation of the motives of the other side. The allegations of intentional wrong doing Bryan Harwell were false, but may have been the product of the ongoing distrust between these parties and beliefs based on physical evidence (such as the whiting out of pertinent information on probate forms) which turned out to be meaningless. This is an equitable matter and I must consider that possibility that Bryan Harwell could have taken concrete steps to resolve the problem early in the life of this Death Certificate issue to resolve this matter, (See S.C. Reg. 61-19 Section 30), but instead used this issue as a bargaining chip to seek a withdrawal of the other unrelated claims. At any rate, the claim was necessary since the Death Certificate was incorrect in the manner in which it did not reflect the existence of a surviving spouse. It is my finding that Ms. Edmunds preparation of this pleading was based on information provided to her by DHEC and Mrs. Harwell. While some of her allegation were not later proven to be true and were perhaps over zealous when made, it did result in obtaining the relief her client needed in that situation. The case of In Re Gregory, cited above does impose on a claimant's attorney some duty to investigate a claim based on information provided to the attorney by the client before filing a petition on that information. However, this duty is only mandatory as it applies to the narrow circumstance involving the fiduciary relationship of an attorney/client. Such a fiduciary relationship did not exist in this case. I find that the investigation related by Ms. Edmunds and the information supplied by the client would have allowed Edmunds enough justification in filing the death certificate claim in question.

As to the filings by Edmunds concerning the creditor's claims based on "the prenuptial agreement" I find them to have been justified on Edmunds part. She has consistently taken the position that she was not a Family Court Practitioner. As such she claimed no knowledge of the facts or the issues involved in those proceedings. Clearly, at the time she was faced with the questions surrounding those claims she perceived herself to be in a time constraint. The time was fast approaching that the claims would be lost if not sued upon in the Probate Court. She had been told by her client that she intended to take action in that court to seek relief from the Settlement Order by way of a Rule 60 Motion for Relief. In fact Mrs. Harwell did file such a motion, pro se, when she was unable to get an attorney to take the case. While all of those claims and motions have now been withdrawn, I cannot consider this question in the light of 20/20 hindsight. I agree with Ms. Edmunds experts that she took the actions necessary to preserve her client's opportunity to have her claims litigated.

I find that Edmunds was not justified in filing or pursuing the claim for the reimbursement of the obituary publication.

SANCTIONS

1. In determining Rule 11 Sanctions this court should consider the following language from the Rule:

The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature *438 designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith

PZC
P 13

2. In determining the amount due under the South Carolina Frivolous Civil Proceedings Sanction Act:

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15–36–10 (2005) provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being **51 assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.

3. The attorney's fees claimed were as follows:
   a) Barth: $15,312.78
   b) Ervin: $19,530.00
   c) Protopapas: $17,054.28

   Total Fees: $51,897.06

I am reducing the amount that would otherwise be due to Bryan Harwell, personally and as Personal Representative by 10% because of the fact that he could have reduced the fees incurred had he gone forward with correcting the Death Certificate at the beginning of the litigation. This reduces total fees incurred of $46, 707.35.

I am assessing sanctions against Law Office of Deirdre W. Edmonds, P.A and Deidre W. Edmonds for her participation in the claim for the cost of the Obituary Publication the sum of $5,000.00.

I am assessing sanctions against Deborah B. Harwell in the sum of $40,000.00, to be reduced by any sums which she may have already paid pursuant to the Family Court award of $25,000.00 in attorney's fees as provided in its Contempt Order.

The sanctions assessed herein shall be paid to R. Bryan Harwell personally and as Personal Representative in partial repayment of fees and costs incurred by them in defending these claims.

IT IS SO ORDERED:

Spartanburg, SC
4/6/17

(SEAL)
Roger L. Couch, Circuit Court Judge

FILED
2017 APR 12 PM 2:45
L. ... O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) C.A. No. 16-CP-21-1435

Deborah B. Harwell)
Plaintiff,)
)
v.) **ORDER**
)
Robert Bryan Harwell, individually)
And as the Personal Representative)
Of the Estate of David W. Harwell;)
And the South Carolina Department)
Of Health and Environmental)
Control, Div. of Vital Records)
Defendants,)
)
v.)
)
Law Office of Deidre W. Edmunds,)
P.A/ and Deidre W. Edmunds,)
Individually,)
Third Party Defendants.)
)

RECEIVED
JAN 04 2018
SC Court of Appeals

FILED
2017 OCT -2 AM 10:25
DORIS ANNE P. DARGAN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter is before this court on motions under Rule 59(e) of the South Carolina Rules of Civil Procedure by all parties in this matter.

A.) I will first address those issues raised by the Defendant Robert Bryant Harwell, individually and as the Personal Representative of the Estate of David W. Harwell, in as much as that party was the moving party before me.

1. The Personal Representative and the Estate have moved that I reconsider the provision in my Order which provides foe the reduction of the amount that I awarded under Rule 11 and the Frivolous Claims Act by any portion of the Family Court Award of attorney's fees which is actually paid by Ms. Harwell. I was made aware at this hearing that she had paid nothing on that award as of the time of the hearing. I was informed that Ms. Harwell had been sanctioned by the Family Court for filing the same actions that were complained of in the Motion before me in this matter. This Family Court action resulted in her being ordered to pay attorney's fees of $25,000.00, and she was to be jailed for a period of 45 days for contempt. I am aware that she served a portion (about 18 days) of that sentence.

In setting the appropriate measure of Sanctions to be assessed in a case under Rule 11 or the Frivolous Claims Act the amount of costs and attorney's fees incurred is certainly a factor to be considered by a court. Rule 11 seeks of a reasonable costs and attorney's fees may be assessed. The Friviolous Claims act talks of an assessment of all or a portion of the attorney's fees incurred in defending a claim be a possible award. One my concerns in is matter is that the issues in the Probate Court, this court and the Family Court involve the filing and merits of the same claims. In some areas the facts and the legal arguments over lap. Further, I was not given any information as to Ms. Harwell's financial ability to pay sanctions. Certainly that is a factor to consider

when considering the issues addressed recently in the Pee Dee Health Care case. In that case the Court of Appeals examined the origins and purposes of an Order for sanctions under Rule 11, SCRCP. While attorney's fees and costs are to be considered, there are many other factors to be considered. The Court made the point that the sanctions are intended to end the litigation and to prevent the filing of future frivolous actions. **Pee Dee Health Care, P.A. v. Estate of Thompson, 418 S.C. 557, 567, 795 S.E.2d 40, 46 (Ct. App. 2016), reh'g denied (Jan. 17, 2017).** It is my finding that the sanctions that I Ordered will put an end to the useless litigation when taken into consideration with all sanctions imposed in both this case and in the Family court action.

2. The Defendant Personal Representative asks that this Court to clarify the actions taken by the Ms, Harwell which are the subject of the sanctions issued by this Court. After a review of my Order I would agree that this does need clarification. I was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the obituary written by her as part of the actions for which there was no justification. Ms. Harwell had waived any claims against the Estate in the Family Court Order that she agreed to. Until and unless that Order is vacated it is the Order that binds her. It was improper for her to begin any action for these items against the Estate. To this extent my previous Order is hereby amended to include these actions as improper and frivolous and therefore the proper subject for sanctions.
3. The Defendant seeks to have this Court revisit and reconsider its rulings and findings concerning Dedre Edmonds. I have reviewed my findings and rulings and see no basis upon which I would change or amend my Order concerning these rulings.

4. The Defendant asks the Court to reconsider its finding and rulings in regard to the Death Certificate issue. Specifically, that the omission of the surviving spouse on the Original Death Certificate prevented Ms. Harwell from receiving certain benefits to which she was entitled which they dispute. This information and finding was taken by this Court from testimony given in the Family Court by Ms. Harwell and repeated in certain Affidavits submitted by Ms. Edmonds. This testimony was to the effect that this omission in the Death Certificate delayed her receiving certain of her benefits. In any case, it was the ruling of this Court that as soon as this death certificate matter was pointed out to the Personal Representative, it should have been researched and corrected. This did not happen and is the basis for this Court's rulings concerning this issue. Therefore, I do not amend or alter my rulings on these matters.

B) Next I will consider the issues raised by Third Party Defendant Deidre W. Edmonds in her Rule 59(e) Motion for Reconsideration.

1. She raises the issue that the claim for reimbursement for the obituary was not a frivolous claim. This court made that finding based on the fact that Ms. Harwell had waived any and all claims, including future claims that she might have had against David Harwell or his estate. Her decision to run and alternate obituary was made by her with full knowledge of this waiver of past, current and future claims. When she ran the Obituary she was in no position to bind the estate or to contract on it's behalf. I see no reason to amend my ruling that the claim should not have been made and was without legal basis. I am not aware of any case or statute that allows a family member or an in-law to take independent actions that create a legally binding obligation on the part of an estate unless that person has been given the legal authority to do so. I know of no such authority in this case.

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2. Secondly, she questions the amount of the award of attorney's fees or sanctions issued in this matter. I have considered the usual factors in awarding attorney's fees such as the nature and complexity of the action , the professional standing of the attorneys involved, the contingency of the action, the results achieved, the customary fess for similar services and the time necessarily expended in defending the action.

In awarding the sanctions that I did also consider what amount of sanctions would assure that the action would be ended and the future conduct of such a nature would be discouraged.

The sanctions awarded against Ms. Edmonds of $5,000.00 would amount to 20 hours of legal work if billed at $250.00/ per hour. That amount of time and that level of compensation is found by this court to be reasonable concerning this issue given the work in this matter that this court has observed, the complexities of the case, the results achieved and the professional standing of counsel involved. Further, the court finds that this amount would also serve to discourage future actions such as this. Therefore, this court has determined that the sanctions awarded are proper.

C) Finally, I will consider the issues raised by Deborah B. Harwell in her Rule 59(e) Motion to Reconsider.

1. Ms. Harwell raises several issues of fact which she says are not disputed. The Court has reviewed the four such factual issues that she raises, and after reviewing these matters finds that they do not provide a basis to amend it previous Order concerning these issues.

2. Next she raises the issue that she was incarcerated by the Family Court and that this fact should negate the need for sanctions concerning the matter before this Court. First of all it should be noted that this court did take the actions of the Family Court concerning costs and

attorney's fees by giving her a credit for those fess and cost against the fees and court awarded by this court in this case, However, her incarceration by the Family Court was for contempt. This court has made no finding of Contempt against her and the issue is not before me in this case. My sanctions are for misconduct under Rule 11 of the SCRCP and the Frivolous Claims Act. Therefore, the actions by the Family Court in connection with a contempt citation would not preclude this court's action in the matters before me, but were considered by me along with other factors in reaching my conclusions in this matter.

3. She next raises the issue of her inability to pay sanction being the only evidence in the record as precluding the issuance of any monetary sanctions in this matter against her. This court noted that there was ample evidence in the record that Ms. Harwell had received a substantial marital settlement from Judge Harwell including a mountain home that was unencumbered. She indicated that she made numerous attempt to employ attorneys and never mentioned that a lack of funds prevented her from doing so. It appears to the court that she was able to afford and employ attorneys at the time of this action.

4. She raises the issue that the Court found that she was motivated by an ongoing personal dispute with the heirs of David Harwell. The Court's finding in this regard was based on the lack of communication that was apparent from the handling of the death certificate issue, the refusal to allow Ms, Harwell to view the body of her husband at the funeral home, and observations made by the Court during the hearing. These disputes seem to be mutual in nature but did exist.

5. The court's finding that as Ms. Harwell proceeded to make her claims in the Probate Court that she was disregarding Orders of a court were based on the fact that there was and stil is a valid Family Court Order in effect in which she had specifically waived the very claims that

she was advancing without having had that Order set aside. This conduct justifies this court's findings in this regard.

IT IS SO ORDERED:

Spartanburg, SC
9/27/17

(SEAL)
Roger L. Couch, Circuit Court Judge

FILED
2017 OCT -2 AM 10:25
DORIS PUGH, CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P.& G.S
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DAVID W. HARWELL,
Plaintiff,
vs.
DEBORAH J. HARWELL,
Defendant.

FAMILY COURT COVERSHEET

Docket No. 2015-DR-26-691

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: KEVIN M. BARTH
Address: P. O. BOX 107
FLORENCE, SC 29503
Email: kbarth@hbbh.net
SC Bar # 00559
Telephone # 843-662-6301
Fax # 843-664-8384
Other: ____

FILED
HORRY COUNTY
2015 MAR 20 PM 3:45
MELANIE HUGGINS-WARD
CLERK OF COURT

DOCKETING INFORMATION (Check one box below if filing in a Mandatory Mediation County)
☐ This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

Nature of Action Codes
(Check One)

Marital Dissolution
- ☐ Divorce (110)
- ☐ Annulment (120)
- ☒ Separate Support and Maintenance (130)
- ☐ Registration of Foreign Divorce Decree – without support/custody (190)
- ☐ Registration of Foreign Divorce Decree – with support/custody (191)
- ☐ Marital Dissolution – Other (199) ____

Abuse and Neglect
- ☐ Abuse and Neglect – Child (210)
- ☐ Abuse and Neglect – Adult (220)
- ☐ Abuse and Neglect – Other (299) ____

Juvenile Delinquency
- ☐ Truancy (311)
- ☐ Incorrigible (312)
- ☐ Runaway (313)
- ☐ Criminal Offense (320)
- ☐ Juvenile Delinquency – Other (399) ____

Protection from Domestic Abuse
- ☐ Domestic Abuse – Intimate Partner (410)
- ☐ Domestic Abuse – Minor (420)
- ☐ Registration of Foreign Order of Protection (490)
- ☐ Domestic Abuse – Other (499) ____

Support
- ☐ Child Support – Private (501)
- ☐ Child Support – Administrative Process (502)
- ☐ Child Support – Judicial Process (503)
- ☐ Registration of Foreign Order of Support (504)
- ☐ UIFSA – Outgoing (505)
- ☐ UIFSA – Incoming (506)
- ☐ Modification of Child Support – Private (507)
- ☐ Modification of Child Support – DSS (508)
- ☐ Modification of Alimony (525)
- ☐ College Expenses (530)
- ☐ Support – Other (599) ____

Custody/Visitation
- ☐ Child Custody/Visitation (610)
- ☐ Modification of Custody/Visitation (615)
- ☐ Registration of Foreign Child Custody Order (690)
- ☐ Custody/Visitation – Other (699) ____

Miscellaneous Actions
- ☐ Name Change (710)
- ☐ Correction/Birth Record (720)
- ☐ Judicial Bypass (730)
- ☐ Adoption (740)
- ☐ Foreign Adoption (741)
- ☐ Post Dissolution Equitable Distribution (750)
- ☐ Paternity – Private (761)
- ☐ Paternity – DSS (762)
- ☐ Termination of Parental Rights – Private (771)
- ☐ Termination of Parental Rights – DSS (772)
- ☒ Miscellaneous Actions – Others (799) enforcing prenupt agrmt, and for attorney fees, etc.

PAID

Submitting Party Signature: _____ **Date:** March 4, 2015

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2013)

Written request for a final hearing in this case must be delivered by a party or his/her attorney to the Clerk of Court's office within 365 days of this filing date. Failure to comply with this rule shall result in the dismissal of the case by the Court.
Date 3/20/16

Custodial Parent (if applicable): _____

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York Counties.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO **MEDIATION** YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

Rule 3	Actions Subject to ADR
Rule 4(d)(1)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

ALL OTHER CONTESTED ACTIONS

Rule 3	Actions Subject to ADR
Rule 4(d)(2)(3)(4) &(5)	Appointment of Mediator by Family Court
Rule 5(g)	Scheduling in Family Court
Rule 6(g)	Agreement in Family Court
Rule 7(f)	Reporting Results of Conference
Rule 9	Compensation of Neutral

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 15-DR-26-_____
David W. Harwell,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION**
v.	)	**FOR *PENDENTE LITE* RELIEF**
	)	
Deborah J. Harwell,	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 MAR 20 PM 3:45
MARY-ANNE HUGGINS-HARD
CLERK OF COURT

TO: DEBORAH J. HARWELL, THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through the undersigned attorney, will move before the Honorable _____ Family Court Judge for the Fifteenth Judicial Circuit, Courtroom _____, Horry County Courthouse, Conway, South Carolina, on the _____ day of _____, 2015, at _____ o'clock, ____.m., or as soon thereafter as counsel can be heard, for a Temporary Order, to grant certain *pendente lite* relief to the Plaintiff, to wit:

1. Granting the Plaintiff the sole and exclusive use, ownership and possession of his pre marital home in Cherry Grove, South Carolina and requiring Defendant to vacate same.

2. Restraining and enjoining the Defendant from harming or harassing the Plaintiff.

3. Granting the right to engage in discovery by way of requests for admission, requests for inspection, interrogatories, discovery depositions, and such other discovery as may be available in accordance with the South Carolina Rules of Family Court and South Carolina Rules of Civil Procedure.

4. Appointing a Mediator.

5. Granting such other and further relief as this Court may deem just and proper.

This motion shall be based upon the pleadings herein and Affidavits and Plaintiff's financial declaration and any testimony allowed, all to be presented at the hearing on the motion.

#2

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

March 3, 2015

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 15-DR-26-
David W. Harwell,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**SUMMONS**
	)	
Deborah J. Harwell,	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 MAR 20 PM 3:45
MELANIE HUGGINS-WARD
CLERK OF COURT

TO DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

March 3, 2015

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 15-DR-26-
David W. Harwell,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT**
	)	
Deborah J. Harwell,	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 MAR 20 PM 3:45
MELANIE HUGGINS-WARD
CLERK OF COURT

#1
KAB

The Plaintiff, complaining of the Defendant herein, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiff herein is a citizen and resident of the County of Horry, State of South Carolina and has been so for more than three months immediately prior to the commencement of this action.

2. The Defendant, upon information and belief is a citizen and resident of the County of Horry, State of South Carolina.

3. The parties hereto are husband and wife having been duly and lawfully married one to the other on November 21, 2001. No children have been born into this marriage and none are expected.

4. That due to unhappy differences existing between the parties, they separated on February 11, 2015 and have remained separate and apart since that time. Plaintiff is informed and believes that the parties are entitled to a decree of separate maintenance and support, one from the other.

5. Prior to their marriage to one another, the parties executed a Prenuptial Agreement on November 19, 2011 which resolves all of the issues involved in the parties current marital dissolution. Plaintiff is informed and believes that this agreement was entered into freely and voluntarily, with full and complete disclosure and the same is valid and should be enforced by this Court. A copy of this agreement is attached hereto and incorporated herein by reference.

#2 VMB

6. That during the course of the marriage, no marital assets or debts have been accumulated, so no equitable division is necessary.

7. That in the aforementioned Prenuptial Agreement, the Defendant herein waived any right to receive alimony from the Plaintiff in any form or fashion whatsoever. The Plaintiff is informed and believes that this is a binding waiver and that this Court should issue its Order barring the Defendant from receiving alimony from the Plaintiff, past, present and future.

8. That in the aforementioned Prenuptial Agreement, the Defendant agreed that if the parties separated from one another, Plaintiff's financial obligation to Defendant would be satisfied upon the payment of $25,000.00 to Defendant. Plaintiff is informed and believes that this Court, in enforcing the Prenuptial Agreement, should declare that Plaintiff's total financial obligation to Defendant will be satisfied upon the payment to her of that amount. Plaintiff is ready, willing and able to pay same to the Defendant.

9. Plaintiff is informed and believes that if the Defendant herein attempts to set aside the aforementioned agreement, she

should be required to pay Plaintiff's attorney's fees, costs and disbursements, both *pendente lite* and permanently.

WHEREFORE, Plaintiff having set forth his Complaint against the Defendant herein, would respectfully pray for an Order as follows:

#3

1. Granting the Parties the right to live separate and apart one from the other.

2. Enforcing the Prenuptial Agreement entered into between the parties dated November 19, 2001 and finding same to be enforceable.

3. Requiring the Defendant to pay the Plaintiff's attorney's fees, costs and disbursements, both *pendente lite* and permanently, if she attempts to set aside the agreement.

4. For such other and further relief as this Court may deem just and proper.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

March 3, 2015

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 15-DR-26-
David W. Harwell,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**VERIFICATION**
	)	
Deborah J. Harwell,	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 MAR 20 PM 3:45
AMY HUGGINS-WARD
CLERK OF COURT

I, David W. Harwell, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached Complaint and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

David W. Harwell
Plaintiff

Sworn to and subscribed before me
this 3rd day of March, 2015

Notary Public of South Carolina
My Commission expires: 12/28/22

SCCA 403F (12/2009)

STATE OF SOUTH CAROLINA)
) PRENUPTIAL AGREEMENT
COUNTY OF HORRY)

THIS AGREEMENT entered into this 19th day of November, 2001, by and between **David W. Harwell**, and **Deborah Boggs Johnson.**

WITNESSETH:

WHEREAS, the parties to this agreement intend to be married in the near future, and

WHEREAS, each of the parties owns property whether real, personal or mixed, in his or her own name, and

WHEREAS, the parties have disclosed and fully informed one another of the respective financial condition of each and their sources of income having exchanged personal financial statements, and

WHEREAS, the parties have each had the benefit of separate legal counsel and financial advise, and

WHEREAS, the parties have discussed this Agreement over a period of time and have mutually agreed to its terms, neither being under the constraint of time, duress or any other manner of coercion, and

WHEREAS, the parties desire to fix and determine by this Prenuptial Agreement the rights and claims that will accrue to each of them in the property and estate of the other by reason of the marriage and to accept the provisions of this Agreement in full discharge and satisfaction of such rights upon divorce, separation or death of the other as to all property, both real and personal, of the other whether acquired before or after the time of the solemnization of the marriage.

#1

NOW THEREFORE, in consideration of the premises and of the marriage and of the mutual promises and undertakings hereinafter set forth, it is hereby agreed by and between the parties hereto as follows:

(1) After the solemnization of the marriage between the parties and except as hereinafter provided, each of the parties shall separately retain all rights in his or her own property presently owned or acquired after the date of the solemnization of the marriage. Except as otherwise herein provided each of them shall have the absolute and unrestricted right to dispose of such property, free from any claims that may be made by the other by reason of their marriage and with the same effect as if no marriage had been consummated between them, except as hereinafter provided.

(2) **Deborah Boggs Johnson** hereby waives, disclaims and releases all right and interest, statutory or otherwise, including but not limited to dower, widow's allowance, homestead allowance, exempt property, statutory allowance, distribution in intestacy and right of election to take against the will of **David W. Harwell,** which she might acquire as the wife, widow, heir-at-law, next-of-kin or distributee of **David W. Harwell** in any property owned by him whether acquired before or after their marriage except as hereinafter provided.

(3) **David W. Harwell** hereby waives, disclaims and releases all right and interest, statutory and otherwise, including but not limited to courtesy, homestead allowance, exempt property, statutory allowance, distribution and intestacy and right of election to take against the will of **Deborah Boggs Johnson** which he might acquire as the husband, widower, heir-at-law, next-of-kin, or distributee of **Deborah Boggs Johnson** in any property owned by her whether acquired before or after their marriage except as hereinafter provided.

(4) Notwithstanding the provisions of this Agreement, and in the event of a divorce or separation, **David W. Harwell** shall pay to **Deborah Boggs Johnson** a lump sum in the amount of

#2 dbj

Twenty-five Thousand and no/100 ($25,000.00) Dollars in lieu of alimony. No alimony other than as provided by this paragraph shall be sought by either party regardless of fault or reason for divorce or separation.

(5) **David W. Harwell** and **Deborah Boggs Johnson** both acknowledge that the nature and extent of the holdings of the other have been fully disclosed to each other and they understand and acknowledge that each has given consideration to these effects, and that each is entering into this Agreement freely and with full understanding of its provisions.

(6) Notwithstanding the provisions of this Agreement, either party shall have the right to transfer or convey to the other any property or interest therein which may be lawfully conveyed or transferred during his or her lifetime or by Will or otherwise upon death, and neither party intends by this Agreement to limit or restrict in any way the right and power to receive any such transfer or conveyance from the other; such gifted property shall be exempt from this Agreement and shall not be subject to equitable division nor elective share provisions only in the event that the party claiming a gift exemption shall have written proof that the transfer of the property in question was indeed a gift. Such written proof shall be signed by the transferor, witnessed by two independent third-parties and duly notarized.

(7) The parties agree that all marital property subject to equitable distribution upon the divorce or separation of the parties shall be limited to that property which is jointly titled in the names of David W. Harwell and Deborah Boggs Johnson. All real estate and personal property, including but not limited to bank accounts, interest, reinvested interest, stocks, bonds, stock or investment accounts, dividends, reinvested dividends, Individual Retirement Accounts, 401k Plan benefits, 457 Plan Benefits, or any other retirement benefits from any source, including but not limited to the South Carolina Judicial Retirement Benefits and General Assembly Retirement

#3

benefits and deferred compensation accounts shall be the sole property of the party in whose name title is held. Such property is specifically excluded as marital property and shall not be subject to equitable distribution upon the divorce or separation of the parties. The parties agree that any and all furniture and fixtures located within any residential real estate where the parties reside or vacation shall be the sole property of the party in whose name the residential property is titled unless evidenced otherwise by written receipt, and shall not be subject to equitable distribution as marital property upon the divorce or separation of the parties; provided, however, that the personal property, including but not limited to pictures, silverware, china, books, jewelry, wearing apparel, boats and computers, regardless of location shall remain the personal property of the owner of such property and shall not be subject to equitable distribution.

Accordingly, **David W. Harwell** shall contribute to a jointly titled bank account the greater of Eight Hundred and no/100 ($800.00) Dollars per month or Two-thirds (2/3) of the expenses incurred to the monthly living expenses of the couple for the duration of their marriage. This contribution obligation shall not continue during a separation by the parties or after their divorce. **Deborah Boggs Johnson** shall be responsible for the balance of the monthly living expenses generated by the couple for the duration of their marriage. The expenses, mortgage payments, maintenance costs, repair costs, insurance and taxes associated with real and personal property shall be the sole responsibility of the owner of the property generating such expense.

David W. Harwell shall bequeath to **Deborah Boggs Johnson** in his Last Will and Testament a One-half (½) interest in his property located at 251 Four Diamond Drive, Seven Devils, North Carolina; the remaining interests in this property shall be bequeathed One-Fourth (1/4) to Bryan Harwell and One-fourth (1/4) to Baxter Harwell. For and within One (1) year after the death of **David W. Harwell, Deborah Boggs Johnson** shall have the option to purchase the One-fourth

#4 dbj

(1/4) interests held by both Bryan Harwell and Baxter Harwell at a price equal to the fair market value of their interests. In the event that **Deborah Boggs Johnson** does not exercise her option to purchase the interests held by Bryan Harwell and Baxter Harwell, Bryan Harwell and Baxter Harwell shall have the option to purchase the One-half (½) interest held by **Deborah Boggs Johnson** for a price equal to its fair market value, such option to begin upon the lapse of **Deborah Boggs Johnson's** option and to run for a term of one (1) year. Fur purposes of the exercise of the above options, fair market value shall be the value agreed upon by the parties involved; provided, however, that in the event that the parties are unable to agree among themselves, **Deborah Boggs Johnson** shall appoint one (1) MAI appraiser, Bryan Harwell and Baxter Harwell shall together appoint one (1) MAI appraiser, and the two appointed MAI appraisers shall appoint an independent MAI appraiser, and the fair market value shall be the value as agreed upon by two of the three MAI appraisers. In the event that two of these three MAI appraisers are unable to agree upon a fair market value, then and in that event, the fair market value of the property shall be determined by an independent Arbitrator selected by the parties or appointed by a court of competent jurisdiction; the Arbitrator shall make his determination solely based on the reports of the three MAI appraisers, and such determination shall be binding on all parties involved. During the option periods and in the event that neither **Deborah Boggs Johnson**, Bryan Harwell, nor Baxter Harwell exercises their option to purchase and shall own the property together, all expenses relating to the property, including but not limited to mortgage payments, insurance, taxes, maintenance and repairs, shall be paid by the parties in proportion to their ownership interest in the property.

David W. Harwell agrees to name **Deborah Boggs Johnson** as the primary beneficiary of his General Assembly Retirement Benefit.

Further, **David W. Harwell** shall provide One Hundred Fifty Thousand and no/100

#5 abs

($150,000.00) Dollars in cash for **Deborah Boggs Johnson** upon his death either through the purchase of an insurance policy or by a cash bequest in his Last Will and Testament.

Further, **David W. Harwell** shall provide **Deborah Boggs Johnson** medical and dental coverage pursuant to his State Health Plan for and during their marriage and so long as he is qualified for benefits pursuant to that Plan.

(8) At the death of either party, the surviving spouse shall have the right to remain in the marital home, regardless of ownership, for a reasonable period of time not to exceed six (6) months and shall be responsible for all utilities and routine maintenance while there. Taxes, mortgage payments, insurance, and repairs costs shall be the responsibility of the decedent's heir(s) or devisee(s) in proportion to their interest in the property.

(9) Each party shall, at the request of the other, execute, acknowledge the execution, and deliver such additional instruments as may be required in order to accomplish the intent of this agreement including, but not limited to, a Waiver of Elective Share, Gift Tax Returns whereby the couple agrees to split gifts, and joint income tax returns. It is expressly understood that neither party shall be asked to sign any such instrument which would create any liability for payment on his or her part.

(10) This Agreement details all the rights of the parties incident to their marriage, and it shall take effect only upon the solemnization of the marriage now contemplated by the parties. In the event of a separation or divorce by the parties, the sole entitlement of **Deborah Boggs Johnson** shall be the Twenty-five Thousand ($25,0000.00) Dollar payment in lieu of alimony pursuant to paragraph (4) of this Agreement. Any bequests contemplated herein shall be effective only in the event that **David W. Harwell** predeceases **Deborah Boggs Johnson** during the term of their marriage. It is understood by the parties that in the event of a separation or divorce, **David W. Harwell** shall have the right to change the named beneficiary under his General Assembly

#6 DBJ initial DWH

Retirement Plan, and he may elect to terminate medical coverage provided to **Deborah Boggs Johnson** under his South Carolina State Health Plan pursuant to pursuant to paragraph (7) of this Agreement.

(11) The consideration for this Agreement is the marriage contemplated by the parties, and the mutual promises contained herein.

(12) This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors and assigns.

(13) In the event any provisions of this Agreement are held to be invalid or unenforceable, the provisions shall be severable from the rest of this Agreement and shall not cause the invalidity or unenforceability of the rest of this Agreement.

(14) In the event that any party shall seek to set aside all or any portion of this Agreement for any reason whatsoever, the prevailing party shall be entitled all court costs and attorney's fees.

(15) This Agreement and its terms may be altered, amended or expanded only by a formal writing signed by both **David W. Harwell** and **Deborah Boggs Johnson**, witnessed by two independent third-parties and duly notarized.

#7

IN WITNESS WHEREOF, the parties have signed and acknowledged this Agreement.

WITNESSES:

Catherine M Ray

Lisa A. Pate

David W. Harwell

Valerie J. Edwards

Joseph J. Brunner Jr.

Deborah Boggs Johnson

Deborah Boggs Johnson

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF FLORENCE)

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says that (s)he saw the within named **David W. Harwell** sign, seal and deliver the foregoing Prenuptial Agreement and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

SWORN to before me this 19th day
of November, 2001.

Notary Public for South Carolina
My Commission Expires: 4/3/2010

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF)

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says that (s)he saw the within named **Deborah Boggs Johnson** sign, seal and deliver the foregoing Prenuptial Agreement and that (s)he with the other witness subscribed witnessed the execution thereof.

Valerie J. Edwards
Witness

SWORN to before me this 19 day
of November, 2001.

Notary Public for South Carolina
My Commission Expires: 5/11/09

ATTORNEY'S CERTIFICATION FOR PROSPECTIVE HUSBAND

The undersigned (hereinafter "Attorney") hereby certifies that Attorney is an attorney at law, duly licensed and admitted to practice in the State of South Carolina; that Attorney has been employed by Prospective Husband, **David W. Harwell,** a party to this Agreement, and that Attorney has advised that party with respect to this Agreement and explained to that party the meaning and legal effect of it; and that Prospective Husband has acknowledged his full and complete understanding of the said Agreement and its legal consequences, and has freely and voluntarily executed the Agreement in the presence of Attorney.

Attorney Catherine M. Ray
~~J. Munford Scott, Jr.~~
Catherine M. Ray

ATTORNEY'S CERTIFICATION FOR PROSPECTIVE WIFE

The undersigned (hereinafter "Attorney") hereby certifies that Attorney is an attorney at law, duly licensed and admitted to practice in the State of South Carolina; that Attorney has been employed by Prospective Wife, **Deborah Boggs Johnson,** a party to this Agreement, and that Attorney has advised that party with respect to this Agreement and explained to that party the meaning and legal effect of it; and that Prospective Wife has acknowledged her full and complete understanding of the said Agreement and its legal consequences, and has freely and voluntarily executed the Agreement in the presence of Attorney.

Attorney **Joseph Burroughs, Jr.**

cr Client Disk "H" 2
05/23/01-
Harwell,David-PrenuptialAgrmt

DAVID W. HARWELL FINANCIAL STATEMENT

ASSETS	VALUE
Real estate	
1. 312 Canal Street, North Myrtle Beach, SC	$550,000
2. Lot, Country Club of Florence, Florence, SC	60,000
3. Lot, Glendale area, Florence, SC	4,000
4. ½ interest in real property owned with James R. Harwell	15,000
5. 215 Four Diamond Dr., Seven Devils, NC	350,000
Cash & Bank Accounts	
1. Bank of America Checking Account	12,051
2. Bank of America Money Manager Account	361,538
3. Center Money Market	1,205
Stocks	
1. Bank of America, 593.3118 shares	36,375
2. BB&T, 10,120.655 shares	339,952
3. The South Financial Group, 31,164 shares	499,247
4. Synovus, 6,211.748 shares	154,858
5. J Net Enterprises, 2,000 shares	5,000
6. Glassmaster, 400 shares	400
7. Delhaize, 307.615 shares	16,995
8. Wachovia, 411.016 shares	12,338
9. Lodgian, 5,000 shares	700
10. Qualcom, 50 shares	2,659
11. Investment Trust, 1,711.1567 shares	4,513
Retirement Accounts and Benefits	
1. A.G. Edwards IRA Account	104,653
2. AARP IRA Account	22,911
3. AARP Investment Program	43,954
4. S.C. Deferred Compensation 457 Plan	329,438
5. S.C Deferred Compensation 401k Plan	76,683
6. Nelson Mullins Riley & Scarborough 401k Plan	35,180
7. S.C. Judicial Retirement & General Assembly Retirement Annuity	400,000
Automobiles & Other Vehicles	
1. 2001 GMC Yukon	20,000
2. 1997 Harley Davidson Heritage Softtail	12,000
3. 1996 Honda Goldwing Motorcycle	10,000
4. 1995 Bombardier Sea-Doo	2,000

Personal Property

1. Furniture, fixtures and guns	25,000

LIABILITIES

No known liens, mortgages, debts or other obligations. All income and property taxes have been paid.	<0>
TOTAL	**$3,508,650**

David W. Harwell
Annual Income Statement

Based on the taxable year 2000, David W. Harwell's annual income was $298,012.00, and his taxable income was $280,702.00. However, two rental properties are no longer owned by David W. Harwell, and the income generated therefrom will no longer be received. Further, $117,802 of the year 2000 income was generated by David W. Harwell's Dispute Resolution services; this income fluctuates from year to year as does his dividend and interest income.

** Also see attached 1999 and 2000 tax returns

Net Worth Statement

Asset	Asset Value	Liability
South Financial Group	$3,700.21	$000.00
American Skandia	$1,312.65	$000.00
Phillip Morris	$785	$000.00
Investors Deposit	$41,000	$000.00
GC Condo	$67,000	$000.00
3830 Hobcaw Single Family	$625,000.00	$000.00
'99 Cadillac	$39,000	$000.00
Seadoo Boat	$5,000	$000.00
Furnishings	$40,000	$000.00
Jewelry/Cameras	$25,000	$000.00
NY Life Equirty	$900	$000.00
Coins/Papers	$250	$000.00
Totals	$848,947.86	$000.00

YEARLY ESTIMATED INCOME STATEMENT

The attached 2000 income tax statement is an exception. I took off six months of the year.

Ripleys.....$20,000
SCCA.....$ 5,000 plus percentage (35%)
SCAEE.....$10,000 plus percentage (20%)
WRNN.....$28,000
Rental $12,000

Total.....$75,000 plus percentages

Deborah Boggs Johnson

** Also see attached 1999 and 2000 tax returns

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

IN THE MATTER OF THE ESTATE OF DAVID W. HARWELL

CASE NUBMER: _____

WAIVER OR WITHDRAWAL OF ELECTIVE SHARE

I, **Deborah Boggs Johnson Harwell**, the spouse of, **David W. Harwell**, hereby, after receiving a full and fair disclosure of the property of my spouse, which disclosure is hereby acknowledged, and after having the opportunity to have advice of my own legal counsel, waive my right to any portion of the elective share to which I may be entitled or may become entitled.

Executed this 19th day of November, 2001.

WITNESSES:

Valerie J. Edwards

Joyce D. Burroughs

Deborah Boggs Johnson Harwell
Deborah Boggs Johnson Harwell

Name: Deborah Boggs Johnson Harwell
Address: 3830 Hobaw Ct.
Murtle Beach, SC 29577
Phone (H): 843-626-2270
Attorney: Joe Burroughs, JR.
Address: 1303 Third Avenue
P.O. Box 1244 Conway, SC 2952.
Phone (O): 843-248-4229

cr Client Disk "H" 2
05/23/01-
Harwell,Deborah-ElectiveShareWaiver

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

IN THE MATTER OF THE ESTATE OF DEBORAH BOGGS JOHNSON HARWELL

CASE NUBMER: _____

WAIVER OR WITHDRAWAL OF ELECTIVE SHARE

I, **David W. Harwell**, the spouse of, **Deborah Boggs Johnson Harwell**, hereby, after receiving a full and fair disclosure of the property of my spouse, which disclosure is hereby acknowledged, and after having the opportunity to have advice of my own legal counsel, waive my right to any portion of the elective share to which I may be entitled or may become entitled.

Executed this 19th day of November, 2001.

WITNESSES:

Catherine M Ray

Lydia A. Pate

David W. Harwell

Name: David W. Harwell
Address: 312 Canal Street
Myrtle Beach, SC
Phone (H): _____
Attorney: J. Munford Scott, Jr.
Address: P.O. Drawer 6105
Florence, SC 29502
Phone (O): (843) 662-8204

cr Client Disk "H" 2
05/23/01-
Harwell,David-lectiveShareWaiver

#1

STATE OF SOUTH CAROLINA)
COUNTY OF Florence)
IN THE MATTER OF: DAVID W HARWELL (Decedent))

IN THE PROBATE COURT

STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2015-ES-21-00778

Decedent's Date of Death (if known): 09-30-2015
Decedent's Last Mailing Address: 312 Canal Street, North Myrtle Beach, S.C. 29582

Creditor:	Deborah B. Harwell
Address:	P.O. Box 7769
	Myrtle Beach, S.C. 29572
Telephone:	843-458-3300
Email:	Adobepalm@aol.com
Original Creditor:	SUN News THE STATE newspaper
Address (if different from above)	
Claim Amount Due:	$ 1,457.25 ($878.00 + $579.25)
Account Number:	
Other Reference Number:	
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	OBITUARY RUN IN THE SUN NEWS $878.00 OBITUARY RUN IN THE STATE NEWSPAPER $579.25
Date claim will become due (if not already due)	ALREADY DUE
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	
Description of security as to the claim, if any (Ex: Collateral for the debt)	

Signature: Deborah B Harwell
Printed Name: Deborah B Harwell
Title: WIFE
Date: 12/03/2015

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim **MUST** be filed once claim is resolved.

FORM #371ES (1/2014)
62-3-104, 62-3-803, 62-3-804, 62-3-806

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF FLORENCE	)	**STATEMENT OF CREDITOR'S CLAIM**
IN THE MATTER OF: DAVID W HARWELL (Decedent)	)	CASE NUMBER: 2015-ES-21-00778

Decedent's Date of Death (if known): 09-30-2015
Decedent's Last Mailing Address: 312 CANAL STREET, NORTH MYRTLE BEACH, SC 29582

Creditor:	DEBORAH B HARWELL
Address:	PO BOX 7769
	MYRTLE BEACH, SC 29572
Telephone:	843-458-3300
Email:	ADOBEPALM@AOL.COM
Original Creditor:	
Address (if different from above)	
Claim Amount Due:	$3,100,000.
Account Number:	
Other Reference Number:	
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	PRENUPTIAL AGREEMENT
Date claim will become due (if not already due)	UPON DEATH
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	
Description of security as to the claim, if any (Ex: Collateral for the debt)	

Signature: Deborah Harwell
Printed Name: DEBORAH HARWELL
Title: WIFE
Date: 01-13-2016

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim **MUST** be filed once claim is resolved.

FORM #371ES (1/2014)
62-3-104, 62-3-803, 62-3-804, 62-3-806

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE FAMILY COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell, Plaintiff, v. Deborah B. Harwell, Defendant	SUMMONS

TO DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

February 3, 2016

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)))	IN THE FAMILY COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO: 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell, Plaintiff, v. Deborah B. Harwell, Defendant.	)))))))))))))	COMPLAINT FOR CONTEMPT AND OTHER RELIEF

The Plaintiff, complaining of the Defendant herein, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiff herein is a citizen and resident of the County of Florence, State of South Carolina and is the duly and properly appointed Personal Representative ("P.R.") for the Estate of David W. Harwell ("the Deceased" or "David Harwell"). (*See* Exhibit 1). The P.R. was appointed on or about October 12, 2015. Pursuant to section 62-3-701 *et seq.* of the South Carolina Code of Laws (2009 & Supp. 2015), the P.R. is responsible for the proper administration of the Estate of the Deceased.

2. The Defendant, upon information and belief is a citizen and resident of the County of Horry, State of South Carolina.

3. The Deceased and the Defendant were husband and wife, having been married to one another on November 21, 2001. No children were born into the marriage and none were expected.

4. Due to unhappy differences existing between the parties, they separated on February 11, 2015, and remained separate and apart until David Harwell's death on September 30, 2015. The Defendant was represented by counsel and received assistance from a financial advisor at a mediation settlement conference held by mediator Lisa Kinon on July 17, 2015, and a mediation agreement was executed by the Deceased, the Defendant, and their respective counsel, on same date.

5. Although the parties were still married to one another at the time of the Deceased's death, the parties were previously before the Family Court on July 21, 2015 for the purpose of having a Mediated Settlement Agreement approved by the Court. As a result of this hearing, the Honorable James A. Spruill, III approved the agreement, and on that same date, filed a Final Order (Ending Action) granting the Deceased the right to live separate and apart from the Defendant and approving the agreement that dealt with all property division, support, and other marital issues. This Court-approved agreement resolved all issues in the marriage, with the exception of the marriage itself. A copy of this Order and Agreement are attached hereto and incorporated herein by reference. (*See* **Exhibit 2**). This Order was not appealed by either party. Upon information and belief, the Deceased fully complied with the Order, transferred any properties required under the Order, and made any payments required of him (with the exception of the outstanding tax refund that has not yet been received from the IRS). The Defendant has received and accepted all of those properties or payments, and she continues to receive the Deceased's General

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Assembly retirement annuity. The Plaintiff believes this Court has jurisdiction to finalize the equitable division of the marital assets (i.e., the tax refund which was addressed in the Family Court's final Order and the Agreement).

6. Under the Order and Agreement (Paragraph 12 of the mediated Agreement), both parties' estates are bound by the terms of the Agreement. The Plaintiff is informed and believes that this Family Court has jurisdiction to finalize an equitable division of marital assets even after the death of one of the parties and that this Court has jurisdiction to enforce its own Family Court orders.

7. Paragraph 12 of Judge Spruill's Order made the following finding: "I further find that each of the parties understands the contempt powers of the Court and has the ability to fully comply with the Agreement." Beneath the judge's signature on the Order was a warning in bold print describing the contempt powers of the Court and stating, "Failure to comply with the terms of this Order may constitute contempt of court, and may be punishable by a fine, a public work sentence, or by imprisonment, or any combination thereof, in the discretion of the Court, but not to exceed imprisonment for one (1) year, a fine of $1,500.00, a public work sentence not to exceed 300 hours or any combination thereof, as provided by South Carolina law."

8. Despite the Court's Order and the court-approved Agreement, the Defendant has repeatedly and blatantly violated the Court's Order and the approved mediated Agreement as follows:

(1) <u>Violation #1</u>: Paragraph 13 of the Agreement - tax refund

KB

Under the Order and Agreement, the parties agreed that "[t]he parties will proportionally share any refund they may receive." A joint tax return was filed for 2014. According to the tax return, a federal tax refund is expected in the amount of $39,799.00. No state tax refund is expected. In early December 2015, the P.R. of the Deceased's Estate contacted local Internal Revenue Service ("IRS") representatives regarding the tax refund check status and if the check had been mailed. The IRS representatives advised the P.R. that the tax refund check had not been mailed because in past years any tax refunds had been applied to the next year's income tax due, and that an IRS Form 1310 (entitled "Statement of Person Claiming Refund Due a Deceased Person") would need to be submitted to receive the tax refund check. The P.R. contacted the Deceased's Family Court attorney, Kevin Barth, for purposes of assisting the Estate to comply with the tax refund provision of the Order. Attorney Barth sent the Defendant the attached email regarding the tax refund. (*See* **Exhibit** 3). The Defendant responded by email, refusing to comply with the Order and demanding all of the tax refund, which was contrary to the Order. (*See* **Exhibit** 4 [redacted copy due to disparaging remarks by the Defendant]). Under Paragraph 12 of the Agreement, the Estate is bound by the Agreement and the P.R. seeks the Court's direction, guidance, enforcement, and blessing on the procedure the Court wishes the P.R. to follow to

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finalize this only remaining issue of equitable division. The P.R. has not submitted any forms to the IRS because of the Defendant's behavior and baseless threats, and the P.R. seeks guidance and assistance from the Court as to how to procedurally comply. The Plaintiff is informed and believes this Court should enforce its Order regarding the tax refund to be received by each party and/or determine the amount due each party and require the parties to sign the appropriate documents necessary to receive the refund. In the event the Defendant refuses to execute any required document regarding the tax refund, the Plaintiff requests an order allowing the Clerk of Court to execute the same for her.

(2) Violation #2: Paragraph 10 of the Agreement - disparaging the other party or family members

In the same email referenced above, the Defendant made unfounded allegations and disparaging remarks against the Deceased and a family member, thereby further violating the Order.

(3) Violation #3: Paragraph 10 of the Agreement - restraining order

In the Agreement, the parties were restrained from contacting or communicating with the other. In violation of this provision of the Agreement, the Defendant appeared, without permission, in the middle of the night at the hospital room where David Harwell was hospitalized. Defendant had to be removed by hospital security. In the same email referenced above, the Defendant admitted her conduct.

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(4) Violation #4: Paragraph 12 of the Agreement - waiver of any claims or rights in the estate of the other

Immediately after the death of David Harwell, the Defendant threatened the family and the funeral home with litigation if it did not meet her "demands" regarding the funeral. These demands included the Defendant's insistence that she be allowed to participate in the Deceased's family's reception line at any visitation or burial and view the Deceased. (*See* Exhibit 5(a)). Defendant demanded of the funeral home that they include her as his wife in any obituary they sent to newspapers. (*See* Exhibit 5(c)). She attempted to, and did in fact, interfere with funeral arrangements by the Deceased's family, thus causing unnecessary inconvenience and stress for the family and the funeral home, who were having to deal with not only the death but also the 1000-year flood contributing to further burial issues. Under the family court order, the Defendant had no rights in the Deceased's estate, and the family and the P.R. in particular were responsible for all matters relating to the Deceased pursuant to § 62-3-701 of the South Carolina Code. Despite this fact, Defendant appeared at the funeral home and demanded that she be able to view the Deceased. The funeral home was uncomfortable with the situation because it had been instructed by the family and the P.R. that there would be no public viewing; thus, the funeral home contacted the P.R. regarding the Defendant's presence and demands. To avoid

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further disruption at the funeral home, the P.R. allowed the Defendant to have a limited supervised viewing of the Deceased. Defendant demanded that the funeral home include her name on any death certificate even though it had provided all information regarding the marital status to SCDHEC/vital statistics. The Defendant demanded removal of comments from the funeral home condolences section by a third party who tried to alert others of the marital status when posting their condolences.

Due to Defendant's continued interference and disregard of the order, and in an effort to comply with the Deceased's requests and avoid further unnecessary drama and emotional stress for the family, the P.R. had counsel advise Defendant that the visitation would be at the family's home on private property and that the funeral would be private for family. Counsel further informed Defendant that if she continued to interfere and defy the order and the requests of the Deceased and his family, she would be promptly removed from the family's home, and that law enforcement would be present.

In the same email referenced above (**Exhibit 4**), the Defendant admits her attempted interference with funeral arrangements causing further confusion and interference with the Deceased's funeral arrangements.

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The Defendant paid for and had published, both in print and online in *The State* and *The Sun News*, unauthorized obituaries misleading the public into believing that there was no family court order, and misleading the public into believing the Defendant was still residing as wife with the Deceased, who died on September 30, 2015, even though the Order was signed July 21, 2015, approving the mediated settlement Agreement and granting the Deceased and the Defendant the right to live separate and apart, and they were in fact living separate and apart. These unauthorized obituaries directed condolences to be sent to the Defendant's post office box in Myrtle Beach and memorials sent to an unauthorized recipient. These obituaries were not authorized by the funeral home, the P.R., or any beneficiary of the Deceased's Estate. The obituaries were specifically contrary to the instructions given by David Harwell to the P.R., the Deceased's counsel, Defendant's counsel, and the mediator, and there was no provision in the Agreement authorizing such. The Defendant's conduct was designed in an effort to specifically contravene and defy the direct instructions of the Deceased and to mislead the public as to the true status of their Family Court disposition and relationship status, and knowing full well that she had no interest in his Estate or any authority to publish anything on behalf of the Estate or the Deceased. Once the family learned of the publication of the unauthorized

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obituaries, the P.R. through counsel attempted to have them removed from continued publication online. The P.R. had to contact the S.C. Bar to have its online "memorial" link to the unauthorized obituary corrected. Furthermore, the Defendant admitted this misconduct and even sent a bill to the P.R. demanding reimbursement for her publication of the unauthorized obituaries. (*Compare* Exhibit 5 [unauthorized obituaries and demand for reimbursement by the Defendant], *with* Exhibit 6 [authorized obituaries]). (*See* Exhibit 5(a) [a text message from the Defendant's phone number sent to the P.R. days after David Harwell's death wherein she threatens controversy and insists on being in any family reception line at visitation and burial]). Unbelievably, the Defendant made this ridiculous demand at the mediation, which was absolutely rejected by the Deceased (*See* Exhibit 5(b) [redacted letter from the Defendant's family court attorney]). (*See* Exhibit 5(c) [Defendant email to funeral home demanding to be in obituary]).

(5) <u>Violation #5</u>: Paragraph 11 of the Agreement - cell phone number released; Paragraph 8 of the Agreement - personal property owned by the Deceased

Subsequent to the Deceased's death, the P.R. had responsibilities concerning the administration of the Estate, which included stopping any unnecessary bills of the Deceased that may be incurred. The P.R. went to a Verizon store in Florence, South Carolina, to request that any billing cease for the Deceased's cell phone number. It appears that the Defendant had never

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released David Harwell's cell phone number from her account, that the number was still in the Defendant's name, and that the Defendant had reported the Deceased's cell phone as stolen. While there, Verizon representatives advised the P.R. that they contacted the Defendant and that she was demanding the Deceased's cell phone. Rather than continue to deal with the Defendant's behavior and unnecessary confusion, the P.R. simply had Verizon wipe any personal information from the Deceased's cell phone and gave it to Verizon representatives. No cell phone bills have been received by the P.R. Verizon assured the P.R. that the Estate would receive no bills related to the Deceased's cell phone number or the phone.

(6) Violations #6, #7, and #8: Paragraph 8 – personal property owned by the Deceased; Paragraph 12 – waiver of any claims or rights in the estate of the other

#6: Upon information and belief, while David Harwell was hospitalized and on a respirator prior to his death, the Defendant in late September 2015 executed an online unauthorized change of address form that caused David Harwell's mail to be forwarded from his address at 312 Canal Street, North Myrtle Beach, SC, to Defendant's address at P.O. Box 7769, Myrtle Beach, SC. The P.R. discovered this unauthorized change of address in November 2015 and advised postal authorities that the Deceased's mail should not be forwarded to the Defendant's address.

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Postal authorities corrected the same upon receiving the P.R.'s request. (*See* Exhibit 7 [copies of official United States Postal Service records received pursuant to Freedom of Information Act request showing the Defendant's COA (change of address) for her individually "IP" on or about 2-13-2015 shortly after the parties separated; then on 9-25-2015, an unauthorized entire family "FP," directing David Harwell's mail be sent to the Defendant's address; followed by the P.R.'s request to forward the Deceased's mail to Timberlane Drive in Florence, SC]).

#7: In late November 2015 (over a month and a half after the Deceased had died and after the P.R. was appointed), the P.R. received an official letter notification from U.S. postal authorities' change of address security division that another unauthorized change of address had been sent to them requesting David Harwell's mail be forwarded from Timberlane Drive, Florence, SC. (*See* Exhibit 8 [USPO change of address security division letter dated November 18, 2015]). In response to the letter, the P.R. contacted local postal authorities at the Florence post office, and the authorities provided records regarding the unauthorized change of address request to have the mail forwarded to the Defendant's P.O. Box address in Myrtle Beach, SC. (*See* Exhibit 9 [indicating the Defendant's name and

HB

address]). The P.R. had postal authorities stop the change of address and contacted the U.S. Postal Inspector due to the Defendant's continued interference with the Deceased's mail and the P.R.'s concern regarding his fiduciary obligation and responsibilities as P.R. in administering the Deceased's Estate, including receiving and responding to the Deceased's mail, notices, bills, dividend checks, etc. and handling them as necessary. The P.R. advised the Postal Inspector about the outstanding issue concerning a joint tax refund check that had not been issued. The P.R. believed these change of address notices were done in an attempt to obtain the tax refund check but that the IRS had not even issued the same, as explained in Violation #1 above. The P.R. requested assistance from the Postal Inspector to retrieve any and all mail of the Deceased that the Defendant had improperly received, and advised the Inspector that he did not wish to cause the Defendant any harm but that her foolishness with interfering with the Deceased's mail needed to immediately stop and that the Defendant needed to immediately return any of the Deceased's mail.

#8: A few days before Christmas 2015, U.S postal authorities sent another notification letter from the change of address security division advising that once again the

Defendant had submitted an unauthorized, improper change of address for David Harwell's mail at Timberlane Drive, Florence, SC, to be forwarded to the Defendant at her P.O. Box in Myrtle Beach, SC. (*See* Exhibit 10 [letter dated December 20, 2015 from the USPO change of address security division]). Once again, the P.R. contacted postal authorities in Florence, SC, who attempted to contact the Postal Inspector, and once again stopped the unauthorized change of address. Postal authorities again provided USPO records showing the Defendant had requested it. (*See* Exhibit 11 [U.S. post office records indicating unauthorized change of address by the Defendant to her P.O. box in Myrtle Beach]). On or about January 7, 2016, the P.R. again contacted the Postal Inspector regarding this incident and the previous incidents, and learned that they had not been successful in contacting the Defendant.

(7) **Violation #9: Paragraph 8 - Personal Property of Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other**

On or about December 21, 2015, the P.R. received a call from representative Baxter Hahn of Wells Fargo in Florence, SC, to which the Deceased had transferred most of his securities, retirement, and cash funds accounts as a result of the Deceased's residence in Florence, SC, rather than

in Myrtle Beach and the closing of Bank of America branches in Florence, SC. The Deceased previously had various accounts with Bank of America, but with the closing of Bank of America branches in Florence and the convenience of Wells Fargo in Florence, David Harwell had moved most of his accounts or funds from Bank of America to Wells Fargo/Baxter Hahn financial advisor. Mr. Hahn advised the P.R. that the Defendant called him, stated she was listed on one of the IRA accounts, and inquired as to the account status. The Defendant advised Mr. Hahn that the P.R. would be removed the following week. The Defendant left a voicemail falsely indicating that she was listed on the Deceased's account, which is attached hereto for the Court to hear. (*See* Exhibit 11(a)). The Defendant had no interest in any of these accounts per the Family Court's order. This conduct and interference constitute a clear violation of Order.

(8) **Violation #10: Paragraph 8 – Personal Property of the Deceased; Paragraph 12 – waiver of any claims or rights in the estate of the other**

On or about January 5, 2016, the P.R. received three separate notifications dated December 15, 2015, and December 16, 2015, from Computershare Trust Company (the former custodian of some of the Deceased's stock certificates). These notifications were sent to the Deceased's Timberlane Drive, Florence, SC address and notified that the records for the Deceased's

accounts now had a new address listing the Deceased's name but was now listing the Defendant's P.O. box in Myrtle Beach, SC. These were unauthorized changes of address, and the P.R. immediately notified Computershare Trust Co. by telephone and overnight letter. Computershare representatives advised the P.R. that they had recently issued two dividend checks, one on the BB&T stock for $2,295.00 and another dividend check for Bank of American stock for $17.40. (This $17.40 check is referenced in Exhibit 15 and was retrieved by U.S. Postal Inspector Moody from the Defendant's P.O. Box in Myrtle Beach, SC). The P.R. had not received those checks, except the $17.40 provided by the Postal Inspector, and Computershare representatives advised the P.R. that those checks had not been cashed and that Computershare now would require a letter in writing and probate court documents in order to change the address back to the correct address. The P.R. complied with Computershare's instructions and sent them an overnight letter with probate court documents, and on January 25, 2016, the P.R. received the reissued dividend checks. Not only has the Defendant's conduct interfered with the receipt of checks, but also this interference with the Deceased's mail affects receipt of estate tax return documents such as IRS Forms 1099 that need to be received. (*See* Exhibit 12 [consisting of three unauthorized change of address notices from Computershare Trust Co., which give the Defendant's P.O. box

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Myrtle Beach, SC address but list the Deceased's name]). (*See* Exhibit 12(a) [overnight letter to Computershare Trust Company advising of fraudulent change of address]).

(9) Violation #11: Paragraph 8 - Personal Property of the Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other

Upon information and belief, the Defendant's interference with the Deceased's mail and the Estate's mail has made it difficult, if not impossible, for the Estate and the P.R. to accurately know whether any outstanding bills are due to creditors and to ensure the proper administration of the Estate. For example, the P.R. has received a delinquent water bill and learned that a property tax notice was not received, and it is difficult to ascertain what other mailings, notices, bills, checks, etc. may have been wrongly diverted. The failure to receive bills, notices, and other mailings could subject the Estate to unnecessary liability and loss, and the P.R. is charged with the fiduciary responsibility to take appropriate action to avoid such adverse consequences. The Defendant's interference with the equitable division and her conduct has caused enormous unnecessary disruption in the normal administration of the Estate, resulting in countless hours spent correcting addresses and searching for bills or notices that need attention. As an example, the Deceased was hospitalized prior to his death for

over a week, and no medical bills or Medicare billing summaries have been received.

On or about the night of January 10, 2016, the P.R. checked the mailbox at Timberlane Drive, Florence, SC, and found a letter from Palmetto GBA (the Medicare subcontractor) indicating a change of address had been received as a result of an unauthorized change of address. (*See* **Exhibit 13**). Also in the mailbox was a letter addressed to the Defendant at the Deceased's Timberlane address-which is not the Defendant's address-sent by Computershare, which was holding the Deceased's securities at one time. This letter was given to U.S. Postal Inspector L.R. Moody. (*See* Exhibit 14). The Defendant was not listed on any of the Deceased's accounts with Computershare and had no ownership of the same. Upon information and belief, the Defendant contacted Computershare with the Deceased's account information and, knowing Computershare would only send documents to the Deceased's address that was on file, had Computershare send the letter to her at the Timberlane address with the intent to have it forwarded to her P.O. Box in Myrtle Beach, SC.

On January 11, 2016, the P.R. met with Postal Inspector Moody and gave her the most recent documentation regarding the unauthorized change of address from the Timberlane address in Florence, SC. At that time, Inspector Moody

provided the attached mail of the Deceased that she had obtained from the Defendant's P.O. Box 7769 in Myrtle Beach, thereby confirming that the Deceased's mail was being received by the Defendant. (*See* **Exhibit** 15 [consisting of various letters addressed to the Deceased but sent to the Defendant's P.O. Box in Myrtle Beach or forwarded to the Defendant at her P.O. Box in Myrtle Beach, particularly (1) a Bank of America tax document and dividend check, (2) a Computershare letter, and (3) the Deceased's Merrill Lynch statement).

All mail of the Deceased should be immediately returned. The Plaintiff would also request as an additional sanction that the Defendant be required to provide under oath an accounting of all funds received by her that belong to the Deceased's Estate.

Upon information and belief, the United States Postal Service has become involved in the issue over the validity of the various forwarding authorizations executed by the Defendant herein. In order to complete the process of insuring that all the Plaintiff's mail is sent to the P.R. of his Estate, and that Defendant's mail is sent to her requested address, Plaintiff is requesting an Order declaring that all mail addressed to Honorable David W. Harwell, Judge David W. Harwell, The David W. Harwell Family, or David W. Harwell, or any variation thereof be sent to his address at Timberlane Drive, Florence, South Carolina.

(10) Violation #12: Paragraph 12 : waiver of any claims or rights in the estate of the other

On February 9, 2016, the P.R. learned through estate counsel that the Defendant had filed a second claim for $3,100,000 against the Estate with the probate court that was not served on the P.R. or the estate attorney. This claim asserted as its basis "PRENUPTIAL AGREEMENT" and attached the Defendant's unauthorized obituary bills. These claims of the Defendant are wholly invalid and improper, and the P.R. is disallowing and denying any and all claims of the Defendant filed against the Estate. (*See* Exhibit 16). The Defendant's conduct clearly violates the Family Court Order, and has affected the administration of the Estate and the P.R.'s efforts to accomplish the sale of real estate for which the P.R. has received verbal good faith offers that could be lost due to the Defendant's interference.

Her outrageous behavior and complete defiance and disregard of the Court's order warrant full contempt sanctions so that she will understand there are consequences for her behavior and to deter her from future additional violations.

The Defendant should be required to withdraw all claims submitted to the probate court and prohibited from further interference with the Deceased's Estate.

9. Based on the Defendant's behavior, the P.R. believes it is necessary to file this contempt action so that he can fulfill his fiduciary responsibilities to the Estate and to stop

the Defendant's intentional misconduct and behavior which are designed to interfere with the P.R.'s ability to manage the Estate; and the P.R. further wishes to fully comply with the court-approved equitable division of assets regarding the tax refund and seeks the Court's direction, guidance, and instructions because of the Defendant's wrongful threats and behavior.

10. The Plaintiff is informed and believes the Defendant should be held in contempt for each of her actions and punished accordingly.

11. The Plaintiff believes that due to the Defendant's conduct, she should be responsible for all attorney's fees and costs related to this matter.

12. The only beneficiaries of the Deceased's Estate are the P.R., who is also the Deceased's son, and William Baxter Harwell, the Deceased's other son, who has reviewed this Complaint and joins fully in the requested relief sought.

WHEREFORE, the Plaintiff, having set forth his complaint against the Defendant, would respectfully pray for an order as follows:

1. Holding the Defendant in contempt of court for each of her violations and punishing her appropriately;
2. Enforcing the Court's Order and the Agreement regarding the tax refund check, determining the amount due each party, giving the P.R. direction and guidance as to how to comply concerning the tax refund, requiring each party to execute any documents necessary to accomplish the division, and if necessary allowing the Clerk of Court to execute any documents required by the Defendant should she fail to execute the same;

3. Returning any and all mail of the Deceased or his Estate; and requiring all mail addressed to Honorable David W. Harwell, Judge David W. Harwell, The David W. Harwell Family, or David W. Harwell, or any variation thereof, be sent to his address at Timberlane Drive, Florence, South Carolina;
4. Requiring the Defendant to file an accounting under oath of any funds received that belong to the Deceased or his Estate; and remove any existing unauthorized online obituaries; and
5. Ordering the Defendant to withdraw all claims that she has submitted to the probate court and prohibiting her from further interference with the Deceased's Estate;
6. Awarding attorney's fees, costs, disbursements, and such other relief as the Court deems just and proper.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

February 8, 2016

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2015-ES-21-00778
COUNTY OF FLORENCE	)	

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents.	)	**SUMMONS**

TO: THE ABOVE-NAMED RESPONDENTS(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, which was filed on or about March 1, 2016, in the Florence County Probate Court. A copy of the Petition is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorney for the Petitioner within thirty (30) days after service hereof, exclusive of the day of service, at P.O. Box 16064, Surfside Beach, SC 29587.

YOU ARE GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Petition.

LAW OFFICE OF DEIRDRE W. EDMONDS, PA

Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

February 29, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2015-ES-21-00778
COUNTY OF FLORENCE	)	
ESTATE OF DAVID W. HARWELL		
Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents .	)	PETITION

The Petitioner above named, Deborah B. Harwell, by and through her undersigned legal counsel will show unto this Court the following:

1. Petitioner Deborah B. Harwell (hereinafter "Mrs. Harwell") is a citizen and resident of the State of South Carolina, County of Horry.

2. David W. Harwell (hereinafter "Decedent") died on September 30, 2015 and, at the time of his death, the Decedent was a citizen and resident of the State of South Carolina, County of Florence. The Decedent's estate is being administered in the Florence County Probate Court in estate file number 2015-ES-21-00778. Therefore, venue is proper in this county and court.

3. Respondent Robert Bryan Harwell (hereinafter "Respondent Harwell") is a citizen and resident of the State of South Carolina, County of Florence, is the Decedent's son and is also the duly appointed personal representative of the Decedent's estate.

4. Respondent South Carolina Department of Health and Environmental Control Division of Vital Records, located in Columbia, South Carolina, is the official state agency charged with recording the birth, marriage and death records in the State of South Carolina.

5. This Honorable Court has exclusive, original jurisdiction over all subject matter related to estates of decedents, including the determination of heirs and successors of decedents, pursuant to S.C. Code Section 62-1-302. Therefore, this Court has subject matter jurisdiction over the determination of a decedent's next of kin and issues related to a decedent's death certificate.

For a First Cause of Action
(Adjudication as Surviving Spouse)

6. Mrs. Harwell and the Decedent were married in the County of Florence, State of South Carolina, on November 21, 2001 (See copy of Marriage Certificate attached hereto as Exhibit "A" and incorporated herein by reference).

7. Mrs. Harwell and the Decedent separated on or about February 11, 2015; however, they never divorced.

8. A Final Order granting the Decedent and Mrs. Harwell separate maintenance and support was entered by the Hon. James A. Spruill on July 21, 2015; however, such Final Order did not terminate the status of the Decedent and Mrs. Harwell as husband and wife. Thus, pursuant to S.C. Code Section 62-2-802, the decree of separate maintenance was not a divorce for purposes of said section.

9. The Decedent died on September 30, 2015 (See copy of Death Certification, commonly referred to as a "Death Certificate", attached hereto as Exhibit "B" and incorporated herein by reference).

10. S.C. Code Section 62-2-802 provides that "an individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death." Conversely, S.C. Code Section 62-2-802 provides that an individual who is married to a decedent and who is not divorced from the decedent or whose marriage to the decedent has not been annulled at the time of death is a surviving spouse.

11. At the time of his death, the Decedent and Mrs. Harwell were not divorced and their marriage has not been annulled. At the time of his death, the Decedent and Mrs. Harwell were legally married and their status as husband and wife had not been terminated. Therefore, Mrs. Harwell is the Decedent's surviving spouse

(See copy of Obituary attached hereto as Exhibit "C" and incorporated herein by reference).

12. There is clear and convincing proof to adjudicate Mrs. Harwell as the surviving spouse of the Decedent, as evidenced by Exhibits "A", "B", and "C", attached hereto and incorporated herein by reference, and as provided under S.C. Code Section 62-2-802.

13. Therefore, Mrs. Harwell asks this Court to adjudicate her as the Decedent's surviving spouse.

For a Second Cause of Action
(Amendment of Death Certificate)

14. The Decedent's son, Respondent Harwell was the "Informant" on the Decedent's Death Certificate. (See Exhibit "B" attached hereto and incorporated herein by reference).

15. In providing information required on the Death Certificate as to the Decedent's marital status, Respondent Harwell stated that the Decedent was "married but separated". (See Exhibit "B" attached hereto).

16. In providing information required on the Death Certificate as to the surviving spouse's name, Respondent Harwell stated the surviving spouse's name as "NA" despite having full and complete knowledge of the identity of Mrs. Harwell as

the Decedent's surviving spouse and despite having full and complete knowledge that the surviving spouse's name was not "NA". (See Exhibit "B" attached hereto).

17. S.C. Code Section 44-63-161(A)(2) provides that "it is unlawful for a person .... to wilfully make a false statement in a certificate, record or report required to be filed ... or to wilfully supply false information intending that the information be used in the preparation ... of a certificate....." SC Code §44-63-161(A)(2).

18. Further, S.C. Code Section 44-63-161(B) provides that "a person who violates ... item [44-63-161(A)] (2) ... is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both." SC Code §44-63-161(B).

19. Respondent Harwell, individually, knowingly and wilfully supplied false information in the preparation of the Decedent's Death Certificate in violation of S.C. Code Section 44-63-161(A)(2).

20. According to applicable state law and/or regulation, the South Carolina Department of Health and Environmental Control Division of Vital Records is unable to allow Mrs. Harwell to request a correction of the Decedent's Death Certificate. The Division of Vital Records has advised Mrs. Harwell that Respondent Harwell as the "informant" on the Death Certificate can request the

correction or, if Respondent Harwell is unwilling to make such request, an order of the Court is required in order for the Division of Vital Records to correct the Decedent's Death Certificate.

21. Respondent Harwell, either individually or as Personal Representative of the Decedent's estate, should be ordered to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate since he wilfully and knowingly provided the false statement about the surviving spouse's name intending the false information to be used in the preparation of the Death Certificate.

22. In the alternative, Mrs. Harwell requests that this Honorable Court order the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate.

WHEREFORE, Petitioner respectfully prays as follows:

1. For an order finding the Petitioner, Deborah B. Harwell, is the surviving spouse of David W. Harwell; and

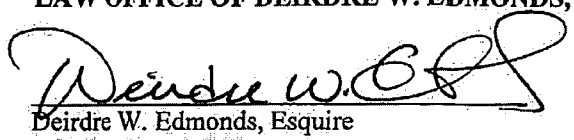
2. Ordering Respondent Harwell, individually or as Personal Representative of the Estate of David W. Harwell, to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse or,

in the alternative, ordering the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate; and

3. For such further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF DEIRDRE W. EDMONDS, PA



Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

February 29, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF FLORENCE)

PERSONALLY appeared before me, Deborah B. Harwell, who, being duly sworn, deposes and says that she is the Petitioner in the foregoing proceedings; that she has read the allegations set forth in the foregoing Petition and the same are true and correct to the best of her knowledge, information and belief.

Deborah B. Harwell

SWORN to before me this 29th
day of February, 2016.

Notary Public for South Carolina
My commission expires: 10-26-23

EXHIBIT "A"

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

148934 — LICENSE NUMBER

HORRY — COUNTY

GROOM-NAME (FIRST) (MIDDLE) (LAST)	BIRTHDATE (MONTH, DAY, YEAR)	AGE
(1) DAVID WALKER HARWELL	(2a) JANUARY 08 1932	(2b) 69

BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)
(3) SOUTH CAROLINA	(4) CAUCASIAN	(5a) 12 CANAL STREET

CITY, TOWN OR LOCATION	COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)
(5b) N. MYRTLE BEACH	(5c) HORRY	(5d) SOUTH CAROLINA	(6) 3rd

BRIDE-NAME (FIRST) (MIDDLE) (LAST)	BIRTHDATE (MONTH, DAY, YEAR)	AGE
(7) DEBORAH BOGGS JOHNSON	(8a) MARCH 25 1950	(8b) 51

BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)
(9) NORTH CAROLINA	(10) CAUCASIAN	(11a) 30 HORCAW COURT

CITY, TOWN OR LOCATION	COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)
(11b) MYRTLE BEACH	(11c) HORRY	(11d) SOUTH CAROLINA	(12) 3rd

MAIDEN NAME OF BRIDE (If Different From Above)

(13) BOGGS

Application for a license was filed with this court at 13:49P M., on the 16th day of NOVEMBER, 2001. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 15:23P M., this the 19th day of NOVEMBER, A.D. 2001.

DIANE BUFFKIN-CREEL — Signature of Issuing Officer

JUDGE OF PROBATE — Title of Issuing Officer

GROOM-Signature (14) David W. Harwell

BRIDE-Signature (15) Deborah B. Johnson

I certify that the above named persons were married on (16) November (MONTH) 21st (DAY) (YEAR) 2001

Place of Marriage (17) Florence (CITY) Florence (COUNTY) SOUTH CAROLINA

OFFICIANT-Signature (18a) [illegible]

OFFICIANT-Title (18b) S.C. Circuit Court Judge

OFFICIANT-Mailing Address (18c) MSCO-180 N. Irby St, Florence, S.C. 29501

250-36-2469 246-80-7992

DHEC 0681 (12/1998)

BRIDE/GROOM COPY

EXHIBIT "B"

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-034683
DECEDENT'S NAME: *DAVID WALKER HARWELL*
SEX: MALE
AKA's: NA
SOCIAL SECURITY NUMBER: 250-36-2469
ARMED FORCES: YES
DATE OF BIRTH: JANUARY 08, 1932
AGE: 83 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT
COUNTY OF DEATH: FLORENCE
NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC, FLORENCE, SC 29506
PLACE OF DISPOSITION: MOUNT HOPE CEMETERY
DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2208 TIMBERLANE DRIVE, FLORENCE, FLORENCE COUNTY, SC. 29506
PLACE OF BIRTH: SOUTH CAROLINA
MARITAL STATUS: MARRIED BUT SEPARATED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: BAXTER HICKS HARWELL SR.
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LACY RANKIN
INFORMANT'S NAME: BRYAN HARWELL
RELATIONSHIP: SON
MAILING ADDRESS: 1389 LAZAR PLACE, FLORENCE, SC, 29501
FUNERAL HOME: STOUDENMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC. 29505
FUNERAL DIRECTOR: JOHN F. DOWLING
LICENSE NUMBER: 1283
EMBALMER'S NAME: DANIEL BENTON
LICENSE NUMBER: 3559
ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 30, 2015
MANNER OF DEATH: NATURAL
ACTUAL OR PRESUMED TIME OF DEATH: 1305
CAUSE OF DEATH - PART I
ANOXIC BRAIN INJURY
VENTRICULAR ARRHYTHMIA
ISCHEMIC CARDIOMYOPATHY
CORONARY ARTERY DISEASE
OTHER SIGNIFICANT CONDITIONS - PART II:
NA
CORONER CONTACTED? NO
AUTOPSY PERFORMED? NO
AUTOPSY AVAILABLE? NA
DATE OF INJURY: NA
TIME OF INJURY: NA
INJURY AT WORK? NA
PLACE OF INJURY: NA
LOCATION OF INJURY: NA
HOW THE INJURY OCCURRED?
NA
CERTIFIER NAME AND TITLE: DR. NICOLETTE NASO
LICENSE NUMBER: 15707
CERTIFIER'S ADDRESS: NA
DATE FILED: OCTOBER 13, 2015
DATE OF ISSUANCE: OCTOBER 14, 2015
SPECIAL INSTRUCTIONS:
NA

SC04641899

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC
South Carolina Department of Health and Environmental Control

EXHIBIT "C"

David Harwell (1932 - 2015)

Notice

The Honorable Judge
David W Harwell
January 8, 1932 - September 30, 2015
North Myrtle Beach

The Honorable SC Chief Justice (Retired) David W. Harwell, 83, passed away on September 30, 2015. He was born in Mars Bluff, SC on January 8, 1932. For the past 21-years, he resided in Horry County. Before death, he was a resident of the Methodist Manor in Florence.

Harwell was the son of Lacy Rankin and Baxter Hicks Harwell, Sr. He graduated from McClenaghan High School in Florence in 1950. He attended the University of Texas and received his law degree from the USC School of Law in 1958. He was a staunch Gamecock fan. He was in private practice with his brother Hicks and served in the SC House of Representatives from 1963 to 1973. He benefited the Pee Dee through serving as Chairman of the Agricultural Study Committee and being a strong member of the Ways and Means Committee. He was known to all as a Southern Statesman with a deep bellow of infectious laughter.

The Judge's favorite work was sitting in the state's county courthouses, listening to cases, working with juries and striking up a conversation with anyone nearby. He was friends with every sector of society, the rich, and the poor, black or white. The Chief loved people and was special to many.

He joined the SC Supreme Court in 1980 and was elected Chief Justice in 1991. He worked to get mediation into SC as a means of dispute resolution. He approved the use of genetic testing in criminal cases and recognized battered women's syndrome as a defense in court. He tried the first death penalty case after the death penalty was restored in 1976. He was most proud of his work to allow cameras in SC courtrooms because he believed it to be a deterrent to crime. Upon retirement he gained a reputation as a national mediator, arbitrator and speaker on ADR. He was a mediator trainer for the US Department of Justice at the National Advocacy Center. After leaving public service, he was associated with Nelson-Mullins and lastly with the Bell Legal Group in Georgetown.

His military service was unique in that he served in the Navy, Army and US Airforce.

The Judge worked hard and played hard. In his youth, he was an outstanding baseball player. During his adult life, he loved golf and enjoyed the Surf Club FP Supper Club. He was a noted hunter and traveled every year to Canada. He was a lover of animals and had a pet deer, German Shepherd, two raccoons and every other animal he could catch during his lifetime. He enjoyed riding his Harley Motorcycle. He liked to call turkey and was known for carrying around a to-go plate on the front seat of the car to feed the animals along the way. The NC Mountains held a special place in his heart with many close friends. He and his wife Debbie traveled the world for the past 18-years and enjoyed friends everywhere.

Of all of his accomplishments, he was most proud of his children, both with law degrees. He is survived by Baxter (Teresa) Harwell; The Honorable US District Judge Bryan (Debbie) Harwell; his wife, Deborah Boggs Harwell; step-son Mike Putnam (Becca); four grandchildren, Walker, Mason, Sarah Nell and Carson Harwell and three step-grandchildren Grayson, Chase and Cohen Putnam; a sister Anne Hill and brothers The Honorable Retired Judge Jim (Kay) Harwell and Joe Harwell; two sister-in-law's Nancy and Margaret Harwell; plus many nieces and nephews. He was pre-deceased by his parents; two brothers, the Rev. Lacy Harwell and the Honorable Judge Hicks Harwell; a brother-in-law Glenn Hill; and a 12-year old son David Walker Harwell, Jr. His constant companion, a black Lab Boo Bear, will greatly miss him.

He was a member at First Presbyterian Church in Myrtle Beach, Hopewell Presbyterian Church in Florence and attended the Ocean Drive Presbyterian Church in NMB.

A memorial service will be held at a later date.

Memorials can be made to either Hopewell Presbyterian Church, 5314 Old River Rd., Florence, SC 29505 or to the Grandfather Home for Children, 156 Hickory Nut Gap Road, Banner Elk, NC 28611. Condolences can be made on-line at www.stoudenmiredowling.com or by mailing address: PO Box 7769, Myrtle Beach, SC 29572.

Funeral Home

Hide Share Remember with My Memorials Twitter Funeral Home Email

Guest Book

"Debbie and Family, So sorry for your loss. He was a fine..."
- Tim and Lou Jane Chest...

View Sign

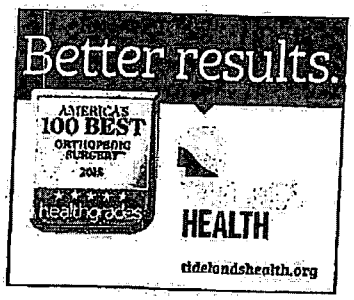
Login with Facebook

YOUR SEARCH HISTORY

Records for Harwell in SC

- View 3 Birth Records
- View 62 Marriage Records
- View 1 Ancestry Death Records

Sponsored by ancestry



STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**CASE NUMBER: 2015-ES-21-00778**
COUNTY OF FLORENCE	)	

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell, Respondent.	)	**SUMMONS**

FILED
2016 MAR -9 AM 9:17
PROBATE COURT
FLORENCE COUNTY, S.C.

TO: THE ABOVE-NAMED RESPONDENTS(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, which was filed on or about March 9th, 2016, in the Florence County Probate Court. A copy of the Petition is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorney for the Petitioner within thirty (30) days after service hereof, exclusive of the day of service, at P.O. Box 16064, Surfside Beach, SC 29587.

YOU ARE GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Petition.

LAW OFFICE OF DEIRDRE W. EDMONDS, PA

Deirdre W. Edmonds

Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

March 8, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
IN THE MATTER OF:)
DAVID W. HARWELL)
(Decedent))

IN THE PROBATE COURT

CASE NUMBER: 2015-ES-21-00778

Deborah B. Harwell,

Petitioner(s)

vs.

Robert Bryan Harwell, as Personal Representative
of the Estate of David W. Harwell,

Respondent(s)

***PETITION FOR ALLOWANCE OF CREDITOR CLAIM**

The undersigned petitions the Court to allow the following claims against the Estate in the amounts set forth below:

Creditor Name and Address	Amount of Claim
Deborah B. Harwell P.O. Box 7769 Myrtle Beach, SC 29572	$3,100,000.00

In support of this Petition, Petitioner incorporates the claim(s) referenced above as presented to the Court and alleges that each claim is valid and (i) was presented within the period for the presentation of claims as provided by law and/or (ii) any claim not yet presented is attached to this Petition and made a part hereof and is being presented within the period for the presentation of claim(s) as provided by law.

(Other:) Prenuptial Agreement.

Executed this 8th day of March, 2016.

Signature: Deirdre W. Edmonds
Print Name: Deirdre W. Edmonds, Attorney for Petitioner
Address: P.O. Box 16064
Surfside Beach, SC 29587
Telephone (Work): (843) 232-0654
(Home):
(Cell):
Email: dedmonds@dedmondslaw.com

Attorney: Deirdre W. Edmonds
Address: P.O. Box 16064
Surfside Beach, SC 29587
Telephone: (843) 232-0654
Email: dedmonds@dedmondslaw.com

***NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

FORM #373ES (1/2014)
62-3-806

ORDER

On the basis of the foregoing Petition and after hearing, the Court finds the aforesaid claim(s) is/are:

_____

_____

_____

_____

THEREFORE, IT IS HEREBY ORDERED that the following be in the amounts set forth below:

Creditor Name and Address	**Amount of Claim**

Executed this day of , 20

_____

Probate Court Judge

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**CASE NUMBER: 2015-ES-21-00778**
COUNTY OF FLORENCE	)	

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell,

Petitioner,

vs.

Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell,

Respondent.

SUMMONS

FILED
2016 MAR -9 AM 9:17
FLORENCE COUNTY, S.C.

TO: THE ABOVE-NAMED RESPONDENTS(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, which was filed on or about March 9th, 2016, in the Florence County Probate Court. A copy of the Petition is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorney for the Petitioner within thirty (30) days after service hereof, exclusive of the day of service, at P.O. Box 16064, Surfside Beach, SC 29587.

YOU ARE GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Petition.

LAW OFFICE OF DEIRDRE W. EDMONDS, PA

Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

March 8, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF FLORENCE)
)
IN THE MATTER OF:)
DAVID W. HARWELL) CASE NUMBER: 2015-ES-21-00778
(Decedent))

Deborah B. Harwell,

Petitioner(s)

vs.

Robert Bryan Harwell, as Personal Representative
of the Estate of David W. Harwell,

Respondent(s)

***PETITION FOR ALLOWANCE OF CREDITOR CLAIM**

The undersigned petitions the Court to allow the following claims against the Estate in the amounts set forth below:

Creditor Name and Address	Amount of Claim
Deborah B. Harwell P.O. Box 7769 Myrtle Beach, SC 29572	$1,457.25

In support of this Petition, Petitioner incorporates the claim(s) referenced above as presented to the Court and alleges that each claim is valid and (i) was presented within the period for the presentation of claims as provided by law and/or (ii) any claim not yet presented is attached to this Petition and made a part hereof and is being presented within the period for the presentation of claim(s) as provided by law.

(Other:) Obituary published in newspapers, The Sun News and The State.

Executed this 8th day of March, 2016.

Signature: Deirdre W. Edmonds
Print Name: Deirdre W. Edmonds, Attorney for Petitioner
Address: P.O. Box 16064
Surfside Beach, SC 29587
Telephone (Work): (843) 232-0654
(Home):
(Cell):
Email: dedmonds@dedmondslaw.com

Attorney: Deirdre W. Edmonds
Address: P.O. Box 16064
Surfside Beach, SC 29587
Telephone: (843) 232-0654
Email: dedmonds@dedmondslaw.com

***NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

ORDER

On the basis of the foregoing Petition and after hearing, the Court finds the aforesaid claim(s) is/are:

THEREFORE, IT IS HEREBY ORDERED that the following be in the amounts set forth below:

Creditor Name and Address **Amount of Claim**

Executed this day of , 20 .

; Probate Court Judge

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO.: 2015-ES-21-00778
ESTATE OF DAVID W. HARWELL		In re: (1) Creditor claim of $3.1 million dollars concerning the prenuptial agreement (2) Creditor claim of $1,457.25 concerning the obituary publication

Deborah B. Harwell,

Petitioner,

v.

Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,

Respondents,

v.

Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually,

Third-Party Defendant.

THIRD PARTY SUMMONS

FILED
2016 APR -1 PM 2:15

TO THIRD PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscribers at 205 N. Irby Street, Florence, South Carolina, and 504 S. Coit Street, Florence, South Carolina within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Third-Party Complaint within

#1
WB
LYPE

the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
P.O. Box 107
Florence, South Carolina 29503
(843) 662-6301

Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
P.O. Box 2527
Florence, South Carolina 29503-2527
(843) 667-6613

Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO.: 2015-ES-21-00778

IN THE MATTER OF:

The Estate of David W. Harwell

In re:
(1) Creditor claim of $3.1 million dollars concerning the prenuptial agreement
(2) Creditor claim of $1,457.25 concerning the obituary publication

Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell, Respondent, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-Party Defendants.	)	**ANSWERS AND COUNTERCLAIMS; and THIRD-PARTY CLAIMS**

2016 APR -1 PM 2:15

To avoid unnecessary duplication, the Respondent hereby answers and responds to both of the two (2) creditor claims and Petitions regarding each, in this one responsive pleading. The Respondent hereby answers and responds to the two (2) creditor claims as follows:

1. All allegations not specifically admitted are DENIED.
2. As to the $1,457.25 claim concerning an obituary, that claim is denied in whole and is invalid.

3. As to the $3.1 million dollar claim concerning the prenuptial agreement, that claim is denied in whole and is invalid.

4. As to the $1,457.25 claim concerning the obituary, that expense was not a debt incurred by the Decedent David W. Harwell or by his Estate, was not authorized by the Personal Representative ("P.R."), and was incurred solely by the Petitioner as referenced by the billing documents attached to the Petitioner's claim. The $1,457.25 expense is solely the responsibility of the Petitioner.

5. As to the $3.1 million dollar claim concerning a prenuptial agreement, the Petitioner and the Decedent were previously before the Family Court in contentious court proceedings, after which a mediated settlement agreement was approved and a final order issued by the Honorable James A. Spruill, III, who issued a Final Order (Ending Action) [*See* **Exhibit A**] granting the Decedent the right to live separate and apart from the Petitioner and approving the agreement that dealt with all property division, support, and other marital issues. The Final Order was not appealed by either party, and the decedent made all transfers of property and payments and fully complied with the Final Order. The Petitioner received and accepted all of those properties and payments, and she continues to receive the Decedent's General Assembly retirement. The Petitioner was represented by counsel and received assistance from a financial advisor concerning the family court matter and the Agreement that she reached with the Decedent and that was approved and ordered by the Family Court. The Final Order and court-approved Agreement are made a part hereof and incorporated herein and are referenced as *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691. Additionally, in

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the agreement and order (*see* ¶ 12), the Petitioner waived any claim or rights against the Estate of David W. Harwell. **[*See* Exhibit B]**

The Family Court specifically approved the Agreement and made it an Order of the Court and further ordered "that this Court reserves jurisdiction to issue any subsequent orders necessary to accomplish the above division of property" and that "failure to comply with the terms of this order may constitute contempt of court." The Final Order is binding on the Petitioner, and the doctrines of res judicata, estoppel, and express or implied waiver apply to the claims asserted by the Petitioner. As a result of these creditor claims being filed and the outrageous conduct and violations of the family court order, a complaint for contempt and other relief has been filed in the Family Court, which has exercised jurisdiction and issued an Order and Rule to Show Cause for Contempt on the Petitioner. The rule to show cause is scheduled to be heard on May 19, 2016. Furthermore, the Order and Rule to Show Cause for Contempt, along with the summons and complaint for contempt, is attached and made a part hereof. **[*See* Exhibit C]**

This Court can and should take judicial notice of the family court Final Order and approved Agreement, as well as all filings made in *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691.

6. The creditor's claim for $1,475.25 concerning an obituary fails to allege facts sufficient to state a claim and must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP").

7. The creditor's claim for $3.1 million dollars concerning a prenuptial agreement fails to allege facts sufficient to state a claim and must be dismissed pursuant to Rule 12(b)(6), SCRCP.

8. The Court lacks subject matter jurisdiction over both alleged creditor claims under Rule 12(b)(1), SCRCP, and there is a Horry County Family Court Order and Rule to Show Cause for Contempt based on the Petitioner's improper filing of the claims against the Estate as well as other conduct violating the Family Court Order; to that extent, the Respondent/Defendant would also assert Rule 12(b)(8), SCRCP, because there is another action pending between the same parties concerning these claims. The Horry County Family Court has subject matter jurisdiction.

9. The Respondent further alleges as to both claims the following affirmative defenses: res judicata, waiver, estoppel, unclean hands, release, accord, and satisfaction, fraud, illegality, laches, law of the case, and payment.

10. The Respondent requests that the Court dismiss with prejudice and costs the claim for $1,457.25 and dismiss with prejudice and costs the claim for $3.1 million dollars.

11. The Respondent requests that the Court dismiss this matter with costs and award attorney fees as to both claims.

FOR A FIRST COUNTERCLAIM AGAINST THE PETITIONER AND CLAIM AGAINST THE THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, PA, AND DEIRDRE W. EDMONDS, INDIVIDUALLY:

(South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 *et seq.*)

12. The Respondent realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants.

13. The Third-Party Defendant Edmonds is upon information and belief a South Carolina licensed attorney doing business as Law Office of Deirdre W. Edmonds, PA in the State of South Carolina and at all relevant times was acting both individually and in her professional capacity and on behalf of herself and as agent for the PA and for the Petitioner. Upon information and belief, the Third-Party Defendant is a resident of Horry County, South Carolina, and has filed and signed unfounded pleadings containing allegations against the Estate and in a related pleading against the P.R. individually.

14. The allegations presented by both the Petitioner and her attorney, the Third-Party Defendant, have no basis in law or fact. The Petitioner and the Third-Party Defendant have filed and persisted in these claims in knowing violation of the Horry County Family Court Final Order, which is a lawful and valid family court order.

15. Prior to any filings, the Petitioner and the Third-Party Defendant were well aware of the Final Order and waiver of all claims against the Estate by the Petitioner (even referencing a family court order in one of the pleadings), as well as the pending Order and Rule to Show Cause for Contempt complaint filed against the Petitioner. Despite their knowledge, the Petitioner and the Third-Party Defendant chose to file three (3) summons and complaints against the Estate and against the P.R. individually and---even after being alerted by the Respondent's counsel of the Final Order and pending Rule to Show Cause and given documentation refuting the claims---to persist in those claims knowing they lacked basis in law and fact.

16. No reasonable attorney or person would make such frivolous claims and file such frivolous pleadings. Persisting in this manner of litigation with no good faith basis or

reasonable argument constitutes bad faith warranting appropriate sanctions under section 15-36-10 of the South Carolina Frivolous Civil Proceedings Sanctions Act.

17. Both the Petitioner and the Third-Party Defendants initiated the three summons and complaints merely to continue to harass and injure the Estate, its beneficiaries, and the P.R. individually and/or to delay and improperly interfere with administration of the Estate.

18. The Petitioner and the Third-Party Defendant have failed to comply with the duties and conditions outlined in the statute.

19. In addition to the dismissal of all claims with costs, the Respondent seeks all sanctions allowed under S.C. Code Ann. § 15-36-10(G) including but not limited to the following: (1) reasonable attorney's fees and costs for the time spent by the Respondent, travel expenses, and any other reasonable consequential expenses; (2) an order requiring the Petitioner and the Third-Party Defendant to pay a reasonable fine to the Court; and (3) injunctive relief designed to deter future frivolous actions.

20. Pursuant to § 15-36-10, the Respondent requests that the Court impose a sanction on the Petitioner and the Third-Party Defendant for violating the provisions of the South Carolina Frivolous Civil Proceedings Sanctions Act; and pursuant to § 15-36-10(H), that upon the imposition of such sanctions against the Third-Party Defendant, the Court report its findings to the South Carolina Commission of Lawyer Conduct.

FOR A SECOND COUNTERCLAIM AND CLAIM AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Civil Conspiracy)

21. The Respondent realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants.

22. The Petitioner and the Third-Party Defendants have joined together to conspire and willfully aid and abet each other to knowingly violate a lawful, valid South Carolina Family Court final order, and to deliberately cause disruption and interference with the administration of the Estate. Knowing their conduct is costly and injurious to the Estate, the Petitioner and the Third-Party Defendants have joined and aided each other for the specific purpose of injuring and causing special damages to the Estate.

23. The Third-Party Defendant owed the Respondent an independent duty under Rule 11, SCRCP, and an independent duty under S.C. Code Ann. § 15-36-10, and a duty to not assist in the knowing and willful violation of a lawful, valid South Carolina Family Court order, and breached these duties in pursuing the instant litigation and not withdrawing any of the claims contained in the three summons and complaints. Alternatively, upon information and belief, the Third-Party Defendant acted in her own personal interest and motivation outside the scope of her representation of the Petitioner.

24. The Estate has suffered special damages as a direct and proximate result of the civil conspiracy. The conduct of both the Petitioner and the Third-Party Defendants was willful, wanton, and reckless.

25. The Respondent seeks actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

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FOR A THIRD CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Slander of Title)

26. The Respondent realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants.

27. The Estate's most valuable real estate assets have had their titles interfered with, encumbered, or otherwise slandered, libeled, or defamed as result of the false, improper, and invalid creditor claims filed by the Petitioner and the Third-Party Defendants. The alleged invalid creditor claims have been published by their filings on the public record with malice, and they are false, defamatory and derogatory to the Respondent's title, cause special damage, and diminish the value of the property in the eyes of third parties.

28. The Estate had good faith offers from prospective buyers seeking to purchase real properties belonging to the Estate valued at just under $1 million dollars in the aggregate. As a direct and proximate result of the invalid claims filed by the Petitioner and the Third-Party Defendants, the Estate cannot convey clear title to prospective buyers. The Estate could not consummate those transactions due to the combined efforts of the Petitioner and the Third-Party Defendants, which resulted in actual damages to the Estate.

29. The Petitioner and the Third-Party Defendants knew of those transactions in light of various filings with the Probate Court, yet they still filed the unfounded claims knowing these actions would interfere with these transactions.

30. Not only has the Estate been unable to proceed with those transactions because it now has its titles slandered, but also the Estate has incurred thousands of dollars in unnecessary property taxes, insurance, and maintenance costs on these properties.

31. The Estate has suffered actual damages as a direct and proximate result of the Petitioner's and the Third-Party Defendants' improperly filed creditor claims.

32. The Petitioner and the Third-Party Defendants have acted willfully, wantonly, and recklessly, and such actions justify an award of punitive damages.

33. Upon information and belief, no privilege applies in this instance to the defamatory pleadings filed in violation of a lawful and valid South Carolina Family Court order because the Petitioner's pleadings and claims were filed in violation of a valid Final Order issued by the Horry County Family Court. Additionally, upon information and belief, no privilege applies because this Probate Court lacks subject matter jurisdiction over the claims, as more particularly explained at ¶ 8 above. For privilege to apply, the court in which the defamatory statement was originally made must have had jurisdiction over the matter; the Probate Court had no such subject matter jurisdiction.

34. To the extent any privilege is found to apply, the Respondent incorporates by reference the abuse of process claim set forth below and seeks damages for injury caused by slander, libel, and defamation of its real property titles.

35. The Estate seeks actual damages joint and several against the Petitioner and the Third-Party Defendants in the amount of $1 million dollars and punitive damages against the Petitioner and the Third-Party Defendants each in an appropriate sum.

FOR A FOURTH CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Abuse of Process)

36. The Respondent realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants.

37. The Petitioner and the Third-Party Defendants had ulterior purposes and performed willful acts in the use of the process not proper in the regular course of the proceeding.

38. The Petitioner and the Third-Party Defendants filed and had served on the Respondent unfounded pleadings not based in law or fact, notwithstanding knowledge of a valid, lawful family court order and other documentation of which the Petitioner and the Third-Party Defendants were aware, and they have persisted in those pleadings and their actions constitute an abuse of process.

39. The improper or ulterior motives or purposes of the Petitioner and the Third-Party Defendants were to (1) extort or coerce money from the Estate, (2) coerce the Estate in an attempt to obtain an improper collateral advantage in the pending family court contempt proceeding, and (3) further cause unnecessary disruption to the Estate and distress to the beneficiaries and extract some sort of revenge or vendetta against the Estate and its beneficiaries.

40. The Respondent has suffered actual damages as a direct and proximate result of the conduct of both the Petitioner and the Third-Party Defendants.

41. The Petitioner's and the Third-Party Defendants' conduct was willful, wanton, and reckless.

42. The Respondent seeks actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

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WHEREFORE, the Respondent, having set forth his answers and counterclaims and third-party claims, seeks the following relief:

(1) dismissal with prejudice of the Petitioner's claim of $3.1 million dollars concerning the prenuptial agreement and an award of costs and attorney's fees;

(2) dismissal with prejudice of the Petitioner's claim of $1,457.25 concerning the obituary and an award of costs and attorney's fees;

(3) full sanctions and relief provided for under the South Carolina Frivolous Civil Proceedings Sanctions Act against the Third-Party Defendant Edmonds and the Petitioner;

(4) an award of actual damages joint and several (in excess of $5,000.00) against the Petitioner and the Third-Party Defendants on each of the Respondent's counterclaims and claims, and punitive damages on each counterclaim and claim against the Petitioner and the Third-Party Defendants, along with costs and attorney's fees; and

(5) a jury trial on each of the Respondent's counterclaims or claims, to the extent permitted by law.

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Florence, South Carolina 29503
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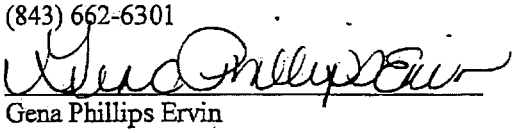

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Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

HB Type

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
David W. Harwell	)	
Plaintiff,	)	JUDGMENT IN A
v.	)	FAMILY COURT CASE
Deborah B. Harwell	)	
Defendant.	)	Docket No. 2015-DR-26-691

Submitted by: KEVIN M. BARTH	Attorney for ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☒ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other:

IT IS ORDERED AND ADJUDGED: ☒ See attached order, ☐ Statement of Judgment by the Court ☐ Additional information for Clerk:

ORDER INFORMATION

This is a ☐ Temporary ☒ Final order. If Final, does this order end the case? ☒ Yes ☐ No.

Support ☒ is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.

Case number under which support is paid if different from this one:

This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.

☐ The following motions are ended by this order (include motion filing date):

☐ This order adds or dismisses the following parties to this case:

☐ dismiss ☐ add : ☐ dismiss ☐ add :

INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

Family Court Judge	Judge Code	Date 7/31/15

SCRCP Form 4F (12/2011)

Exhibits A + B

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20___ to attorneys of record or to parties (when appearing pro se) as follows:

_____	_____
_____	_____
_____	_____
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEYS FOR THE DEFENDANT(S)

_____
CLERK OF COURT

Court Reporter:

Custodial Parent (if applicable):

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2015-DR-26-691
David W. Harwell,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**FINAL DECREE**
	)	(Ending Action)
Deborah B. Harwell,	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 JUL 21 PM 3:39

DATE OF HEARING..... JULY 21, 2015
TRIAL JUDGE..... JAMES A. SPRUILL
COURT REPORTER..... H. EUGENE BUCKNER
PLAINTIFF'S ATTORNEY..... NICHOLAS W. LEWIS
SUBSTITUTING FOR KEVIN M. BARTH
DEFENDANT'S ATTORNEY..... JULAAN DERRICK LAWRENCE
GUARDIAN *AD LITEM*..... NONE

This matter was initially commenced by the Plaintiff with the filing of an original Summons and Complaint on March 20, 2015. In his Complaint, the Plaintiff requests a Decree of Separate Maintenance and Support, an Order enforcing the Prenuptial Agreement entered into between the parties dated November 19, 2001 and finding same to be enforceable, and an award of attorney's fees, costs and disbursements.

These pleadings were duly and properly served upon the Defendant as appears from the Acceptance of Service on file herein. The Defendant did not file any responsive pleadings in this matter but did participate, with counsel, in the mediation, and has submitted an Affidavit of Non Appearance to the Court.

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Plaintiff was present at the hearing with his attorney of record. The Defendant did not personally appear. However, Defendant's attorney of record appeared and presented to the Court an Affidavit of Non Appearance indicating that the Defendant had knowingly and willingly waived her right to appear at this hearing. I find this waiver to be proper, and find that the matter is properly before the Court.

Prior to the commencement of this final hearing, the parties' attorneys provided the Court with a written agreement signed and executed by both parties, along with financial declarations.

Upon the commencement of this hearing, the Court inquired of the Plaintiff regarding the possibility of reconciling the marriage. Based upon the response of the Plaintiff, I find that there is no chance of reconciling the marriage, nor is there anything the Court could do to assist in such a reconciliation.

Based upon the entire file in this matter, as well as the evidence and testimony presented, I make the following findings and conclusions:

JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Horry, State of South Carolina, and has been so for more than three months immediately prior to the commencement of this action.

2. The Defendant was a citizen and resident of Horry County, South Carolina at the time she was served with

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the Plaintiff's pleadings. In addition, she has appeared by and through her counsel of record and Affidavit of Non-Appearance. This Court has personal jurisdiction over the parties hereto.

3. The parties are husband and wife having been duly and lawfully married one to the other on November 21, 2001. No children have been born into the marriage and none are expected.

4. This is an action for a Decree of Separate Maintenance and Support, as well as other related marital relief. This Court therefore has subject matter jurisdiction.

5. The parties last resided together as husband and wife in the County of Horry, State of South Carolina. Venue is therefore proper in this County and State.

SEPARATION

6. I find from the duly corroborated testimony that the parties separated on or about February 11, 2015 have not resumed living together as husband and wife since that time.

7. I find that the Plaintiff is entitled to live separate and apart from the Defendant herein.

APPROVAL OF MEDIATED AGREEMENT

8. I find that the parties desire to resolve all of the issues involved in the marriage, save and except the divorce itself and as a result, have executed a **Mediated Agreement** (hereinafter "Agreement") dated July 17, 2015, the original of which is attached hereto and incorporated herein by reference. I find that the signatures on that Agreement are, in fact, the signatures of the parties and the Agreement attached hereto is the Agreement entered into by and between the parties. Furthermore, by oral agreement at the hearing, the parties requested to supplement the written Agreement to also provide that the Plaintiff agrees to dismiss his action against the Defendant pending in the Court of Common Pleas for the Fifteenth Judicial Circuit.

9. I find that each of the parties understands the Agreement totally and completely, believes it to be a fair, equitable and just resolution of the issues dealt with and desires that it be approved by this Court. I further find that each party is fully aware of the income, assets, and liabilities of the other and that each has had sufficient financial disclosure from the other from which to make an informed decision regarding the fairness of this Agreement.

10. I find that each of the parties entered into this Agreement freely and voluntarily and without threat, duress or coercion and while not under the influence of alcohol, drugs or other intoxicants.

11. I find that each of the parties entered into the Agreement with the advice and consent of able, competent and experienced trial counsel with whom each is satisfied.

12. I further find that each of the parties understands the contempt powers of the Court and has the ability to fully comply with the Agreement.

13. I find that each of the parties in the Agreement has waived alimony from the other, past, present and future, with the only exception being the one lump sum non modifiable alimony payment to the Wife, as outlined in this Agreement. I further find that each of the parties understands that this is a final and permanent waiver of alimony, which cannot be revisited in the future. I find that the waiver of alimony on each part was knowingly and willingly made and that each has the ability to support himself or herself without help from the other.

14. I further find that each of the parties understands that the terms of the Agreement relating to the division of property, assets and debts are permanent and final, and cannot be modified by the Court in the future.

15. I find that each of the parties had the ability to retain the services of any expert deemed to be necessary in order to make an informed decision

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regarding the Agreement and each is satisfied with going forward at this time.

16. I find that the Agreement is fair and equitable to each of the parties both from a substantive and procedural standpoint, and that it should be approved by this Court.

ACCORDINGLY, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Plaintiff be allowed to live separate and apart from the Defendant.

2. The Mediated Agreement dated July 17, 2015, the original of which is attached hereto and incorporated herein by reference, be approved with the one supplement noted above, adopted and incorporated herein below as fully as if set forth herein verbatim.

3. That this Court reserves jurisdiction to issue any subsequent Orders necessary to accomplish the above division of property, including any Qualified Domestic Relations Orders.

AND IT IS SO ORDERED!

JAMES A. SPRUILL
JUDGE OF THE FAMILY COURT FOR
THE FIFTEENTH JUDICIAL
CIRCUIT

Conway, South Carolina

July 21, 2015

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY CONSTITUTE CONTEMPT OF COURT, AND MAY BE PUNISHABLE BY A FINE, A PUBLIC WORK SENTENCE, OR BY IMPRISONMENT, OR ANY COMBINATION THEREOF, IN THE DISCRETION OF THE COURT, BUT NOT TO EXCEED IMPRISONMENT FOR ONE (1) YEAR, A FINE OF $1,500.00, A PUBLIC WORK SENTENCE NOT TO EXCEED 300 HOURS OR ANY COMBINATION THEREOF, AS PROVIDED BY SOUTH CAROLINA LAW.

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT FOR THE
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)

David W. Harwell,)
Plaintiff,)
v.) **SUPPORT INFORMATION SHEET**
Deborah B. Harwell,)
Defendant.)
) Docket No. 2015-DR-26-691

FILED
2015 JUL 21 AM 9:46
HORRY COUNTY
CLERK OF COURT

Check appropriate box:

☒ No spousal or child support ordered. (No other items should be completed.)

☐ If support is ordered to be paid directly or through the Court, you must complete BOTH pages (as applicable).

Obligation Type	Child Support	Spousal Support	Other
Amount	$	$	$
Collection Costs (5%)	$	$	$
Payment Frequency			
Payment Start Date			
Weekly	☐	☐	☐
Bi-Weekly	☐	☐	☐
Monthly	☐	☐	☐
Semi-monthly (1st and 16th)	☐	☐	☐
Semi-monthly (15th and 30th)	☐	☐	☐
Total Arrearage Amount	$	$	$
Wage Withholding			
Required by S.C. Code Ann. §63-17-1420	☐	☐	☐
Ordered	☐	☐	☐
Not Ordered	☐	☐	☐

Name of Custodial Parent (if applicable):

*******OBLIGOR'S DESIGNATION STATEMENT: PAYMENT OF COURT COSTS*******

I acknowledge that S.C. Code Ann. § 63-3-370 requires that I pay and the Family Court has ordered that I pay court costs in an amount equal to five (5) percent of my support payment made through the Clerk of Court or the centralized wage withholding system. I owe and will pay these costs in addition to my support obligation.

To meet my duty to pay court costs, I designate an amount equal to five (5) percent of the support payment I make to be applied and distributed in payment of court costs, not support.

I acknowledge that the Clerk of Court or, if payments are withheld from my income, the centralized wage withholding system to deduct the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: _____, 2015

Signature of Person paying Support**

*****NOTE TO CLERK: FILE AND PROCESS THIS FORM EVEN IF SIGNATURE OF PERSON PAYING SUPPORT IS NOT PROVIDED.*****

SCAA 446 (4/2010)

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE FAMILY COURT FOR THE 15TH JUDICIAL CIRCUIT
DAVID W. HARWELL	)	Docket Number: 2015-DR-26-691
Plaintiff,	)	MEDIATION AGREEMENT
V.	)	
DEBORAH J. HARWELL	)	
Defendant.	)	

FILED
2015 JUL 21 AM 9:39
CLERK OF COURT

A mediated settlement conference was held before Lisa Kinon on July 17, 2015. As a result of this conference, the case should be considered settled pursuant to the terms of the following agreement of the parties:

1. The parties agree that they have settled the issues addressed herein and intend to present these matters to the court seeking court approval and incorporation as an order resolving the issues this memorandum addresses. This memorandum is intended as a general outline of the agreement in principal and the parties acknowledge it may require a more comprehensive detailed agreement. However, the parties agree that the resolution of the case in principal is as outlined in this memorandum.

2. The parties executed a Premuptial Agreement prior to the date of their marriage. The parties have settled all of the issues arising out of their marriage and of the Premuptial Agreement by this Mediation Agreement and request the Family Court approve and incorporate this Mediation Agreement into an order of the Court.

3. The wife shall receive the Seven Devils house in North Carolina (valued at $300,000.00 for purposes of this agreement) and shall be responsible for all costs associated therewith including, taxes and insurance. The husband shall be responsible for the preparation of

all document s necessary to transfer title of this property to the wife. The husband shall execute the deed within 30 days of the approval of this agreement.

4. The husband shall pay to the wife the sum of $75,000.00 in lump sum non-modifiable alimony at the time of the approval of this agreement by the Family Court.

5. The husband shall continue to name the wife as his irrevocable beneficiary on his General Assembly Retirement. The husband shall also maintain the wife at the current level of coverage on his state health insurance plan during his lifetime and so long as allowed by the plan.

6. The wife shall vacate the Cherry Grove home within 30 days of the date of this agreement and shall leave the home in good condition.

7. The wife shall receive the Seadoo boat, older jet ski, and her vehicles.

8. The wife will receive from: a) the Cherry Grove house the chest of drawers, the massage chair, and her clothes, b) from the Florence house the office chair, vase in Queen Anne chairs, and her clothes, c) all the furnishings contained in the Seven Devils house except the husband shall receive the deer head and mounts and his clothes. As full and final settlement of any remaining personal property division the husband shall pay an additional $1,000.00 to the wife at the time of the approval of the agreement. The husband shall receive all of the remaining personal property at all locations, including his 45-caliber Army pistol. The husband shall be responsible for transporting the items from the Florence home to the wife's Grand Dunes house and the wife shall be responsible for transporting the items from the Seven Devils home to the husband's Cherry Grove home. Both transfers shall be accomplished within 30 days of the approval of this agreement.

9. Each party shall be responsible for the debts incurred in his or her name and shall hold the other party harmless.

10. The parties shall be mutually restrained from disparaging the other party, or any member of the other parties' family, including, children, children's spouses, and grandchildren, in any manner. The parties are further restrained from contacting or communicating with the other.

11. The wife shall take all steps necessary to release the husband's cell phone number from her plan within 30 days of the approval of this agreement.

12. Both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other. Each party's estate shall be bound by the terms of this agreement.

13. The parties will file a joint tax return for 2014. The husband shall be responsible for the payment of taxes due. The parties will proportionally share any refund they may receive.

14. Each party acknowledges they have entered into this agreement freely and voluntarily. Each party further acknowledges they are not under the influence of any drugs or alcohol that would impede their ability to enter into this agreement. Each party further acknowledges they are entering into this agreement without undue influence and both are free from duress or coercion.

15. Each party acknowledges they have had the advice and counsel of very competent attorneys with whom they are fully satisfied and that they do not need any additional time to discuss these issues with their respective attorneys.

16. The wife acknowledges she has had the assistance of a very competent financial advisor during these negotiations and is satisfied with his services and does not need any

additional time to discuss these issues with him. The husband acknowledges he has not had the assistance of a financial advisor and waives any right he may have to seek advice from a financial advisor.

17. Each party acknowledges they have the right to a trial on any and/or all issues addressed in this agreement and further acknowledge that by entering into this agreement they are each waiving the right to have a trial on the issue(s).

18. Each party will be responsible for the payment of their attorney's fees and costs.

19. The parties agree to split equally the cost of mediation.

20. The parties agree that by the signing of this agreement they waive any confidentiality of the mediation proceedings.

21. The parties agree that should they have a dispute or disagreement over the language to be used in any formal agreement resulting from this mediation that the mediator will be the arbitrator as to the language to be used.

By their signatures subscribed hereto, the parties and their counsel agree that these terms constitute the settlement agreement and agreement of the parties reached as a result of the mediation conference held in this matter.

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

David W. Harwell
Plaintiff

v.

Deborah B. Harwell
Defendant

CASE NO. 2015-DR-26-691

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

FILED 2016 FEB 11 PM 12:10

Plaintiff's attorney:	Defendant's attorney:
KEVIN M. BARTH Bar #: 00559 P.O. Box 107 Florence, SC 29503	None/unknown Bar #:
Phone: 662-6301 Fax: 664-8384 E-mail: kbarth@hbbh.netOther:	Phone: Fax: E-mail: Other:

☐ MOTION HEARING REQUESTED (attach written Motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion Type

☐ Written motion attached
☒ Form Motion / Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: 2-11, 20 16

CLERK'S VERIFICATION

Collected by: (print name) Date Filed: , 20

☐ MOTION FEE COLLECTED: $
☐ CONTESTED - AMOUNT DUE: $

SCCA 233F (12/2009)

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
David W. Harwell	)	
Plaintiff,	)	JUDGMENT IN A
v.	)	FAMILY COURT CASE
Deborah B. Harwell	)	
Defendant.	)	Docket No. 2015-DR-26-691

Submitted by: KEVIN M. BARTH	Attorney for ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☐ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other:

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court: ☐ Additional information for Clerk:

ORDER INFORMATION

This is a ☐ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No

Support ☐ is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.

Case number under which support is paid if different from this one:

This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.

☐ The following motions are ended by this order (include motion filing date):

☐ This order adds or dismisses the following parties to this case:

☐ dismiss ☐ add : ☐ dismiss ☐ add :

INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		N/A
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

Family Court Judge | 415 Judge Code | 2-11-16 Date

SCRCP Form 4F (12/2011) 1

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20___ to attorneys of record or to parties (when appearing pro se) as follows:

_____ _____

_____ _____

_____ _____

ATTORNEY(S) FOR THE PLAINTIFF(S) ATTORNEYS FOR THE DEFENDANT(S)

_____

CLERK OF COURT

Court Reporter:

Custodial Parent (if applicable):

MJB

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell,	)	
Plaintiff,	)	
v.	)	ORDER AND RULE TO SHOW CAUSE
Deborah B. Harwell,	)	
Defendant.	)	

FILED
HORRY COUNTY
2016 FEB 11 PM 12:02
MELANIE HUGGINS-WARD
CLERK OF COURT

COPY

TO: DEBORAH B. HARWELL THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY ORDERED AND REQUIRED to show cause, if any you can, in open Court on the 10th day of March, 2016 at 2:30, P.M. before the Honorable Melissa Buckhannon, Judge of the Family Court for the Fifteenth Judicial Circuit in the ____ Floor Courtroom, Horry County Courthouse, Conway, South Carolina.

1. Why you should not be held in contempt of Court for failing to abide by the Order signed by the Honorable James A. Spruill, III and filed July 21, 2015, by:

A. Violating the tax refund division provision of the Court's Order;

B. Violating the Court's Order and interfering with the Deceased's Estate, property, accounts, and mail;

MJB

C. Violating the restraining order provision and the disparaging remarks provision of the Court's Order; and

D. Violating the cell phone number release provision of the Court's Order and instead reporting the Deceased's phone as stolen.

2. Why you should not be required to pay all costs and attorney's fees associated with the institution and prosecution of this Rule to Show Cause and Contempt Action.

This Order and Rule to Show Cause may be served upon the person named above by any means allowable under Rule 14(e) of the South Carolina Rules of Family Court.

JUDGE OF THE FAMILY COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

~~January~~ Feb 11, 2016

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE FAMILY COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell, Plaintiff, v. Deborah B. Harwell, Defendant.	)	ORDER AND RULE TO SHOW CAUSE

FILED
2016 FEB 11 PM 2:10
CLERK OF COURT
HORRY COUNTY

TO: DEBORAH B. HARWELL THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY ORDERED AND REQUIRED to show cause, if any you can, in open Court on the _____ day of _____, 2016 at _____, ___.M. before the Honorable _____, Judge of the Family Court for the Fifteenth Judicial Circuit in the ____ Floor Courtroom, Horry County Courthouse, Conway, South Carolina.

1. Why you should not be held in contempt of Court for failing to abide by the Order signed by the Honorable James A. Spruill, III and filed July 21, 2015, by:

A. Violating the tax refund division provision of the Court's Order;

B. Violating the Court's Order and interfering with the Deceased's Estate, property, accounts, and mail;

MJB

C. Violating the restraining order provision and the disparaging remarks provision of the Court's Order; and

D. Violating the cell phone number release provision of the Court's Order and instead reporting the Deceased's phone as stolen.

2. Why you should not be required to pay all costs and attorney's fees associated with the institution and prosecution of this Rule to Show Cause and Contempt Action.

This Order and Rule to Show Cause may be served upon the person named above by any means allowable under Rule 14(e) of the South Carolina Rules of Family Court.

JUDGE OF THE FAMILY COURT FOR THE
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

~~January~~ Feb 11, 2016

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)))	IN THE FAMILY COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell, Plaintiff, v. Deborah B. Harwell, Defendant.	)	SUMMONS

TO DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

February 8, 2016

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2015-DR-26-691
David W. Harwell, Deceased, by and through the duly appointed Personal Representative of His Estate, Robert Bryan Harwell,	)	
Plaintiff,	)	
v.	)	COMPLAINT FOR CONTEMPT AND OTHER RELIEF
Deborah B. Harwell,	)	
Defendant.	)	

The Plaintiff, complaining of the Defendant herein, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiff herein is a citizen and resident of the County of Florence, State of South Carolina and is the duly and properly appointed Personal Representative ("P.R.") for the Estate of David W. Harwell ("the Deceased" or "David Harwell"). (*See* Exhibit 1). The P.R. was appointed on or about October 12, 2015. Pursuant to section 62-3-701 *et seq.* of the South Carolina Code of Laws (2009 & Supp. 2015), the P.R. is responsible for the proper administration of the Estate of the Deceased.

2. The Defendant, upon information and belief is a citizen and resident of the County of Horry, State of South Carolina.

3. The Deceased and the Defendant were husband and wife, having been married to one another on November 21, 2001. No children were born into the marriage and none were expected.

4. Due to unhappy differences existing between the parties, they separated on February 11, 2015, and remained separate and apart until David Harwell's death on September 30, 2015. The Defendant was represented by counsel and received assistance from a financial advisor at a mediation settlement conference held by mediator Lisa Kinon on July 17, 2015, and a mediation agreement was executed by the Deceased, the Defendant, and their respective counsel, on same date.

5. Although the parties were still married to one another at the time of the Deceased's death, the parties were previously before the Family Court on July 21, 2015 for the purpose of having a Mediated Settlement Agreement approved by the Court. As a result of this hearing, the Honorable James A. Spruill, III approved the agreement, and on that same date, filed a Final Order (Ending Action) granting the Deceased the right to live separate and apart from the Defendant and approving the agreement that dealt with all property division, support, and other marital issues. This Court-approved agreement resolved all issues in the marriage, with the exception of the marriage itself. A copy of this Order and Agreement are attached hereto and incorporated herein by reference. (*See* **Exhibit 2**). This Order was not appealed by either party. Upon information and belief, the Deceased fully complied with the Order, transferred any properties required under the Order, and made any payments required of him (with the exception of the outstanding tax refund that has not yet been received from the IRS). The Defendant has received and accepted all of those properties or payments, and she continues to receive the Deceased's General

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Assembly retirement annuity. The Plaintiff believes this Court has jurisdiction to finalize the equitable division of the marital assets (i.e., the tax refund which was addressed in the Family Court's final Order and the Agreement).

6. Under the Order and Agreement (Paragraph 12 of the mediated Agreement), both parties' estates are bound by the terms of the Agreement. The Plaintiff is informed and believes that this Family Court has jurisdiction to finalize an equitable division of marital assets even after the death of one of the parties and that this Court has jurisdiction to enforce its own Family Court orders.

7. Paragraph 12 of Judge Spruill's Order made the following finding: "I further find that each of the parties understands the contempt powers of the Court and has the ability to fully comply with the Agreement." Beneath the judge's signature on the Order was a warning in bold print describing the contempt powers of the Court and stating, "Failure to comply with the terms of this Order may constitute contempt of court, and may be punishable by a fine, a public work sentence, or by imprisonment, or any combination thereof, in the discretion of the Court, but not to exceed imprisonment for one (1) year, a fine of $1,500.00, a public work sentence not to exceed 300 hours or any combination thereof, as provided by South Carolina law."

8. Despite the Court's Order and the court-approved Agreement, the Defendant has repeatedly and blatantly violated the Court's Order and the approved mediated Agreement as follows:

(1) **<u>Violation #1</u>: Paragraph 13 of the Agreement - tax refund**

HB

Under the Order and Agreement, the parties agreed that "[t]he parties will proportionally share any refund they may receive." A joint tax return was filed for 2014. According to the tax return, a federal tax refund is expected in the amount of $39,799.00. No state tax refund is expected. In early December 2015, the P.R. of the Deceased's Estate contacted local Internal Revenue Service ("IRS") representatives regarding the tax refund check status and if the check had been mailed. The IRS representatives advised the P.R. that the tax refund check had not been mailed because in past years any tax refunds had been applied to the next year's income tax due, and that an IRS Form 1310 (entitled "Statement of Person Claiming Refund Due a Deceased Person") would need to be submitted to receive the tax refund check. The P.R. contacted the Deceased's Family Court attorney, Kevin Barth, for purposes of assisting the Estate to comply with the tax refund provision of the Order. Attorney Barth sent the Defendant the attached email regarding the tax refund. (*See* **Exhibit 3**). The Defendant responded by email, refusing to comply with the Order and demanding all of the tax refund, which was contrary to the Order. (*See* **Exhibit 4** [redacted copy due to disparaging remarks by the Defendant]). Under Paragraph 12 of the Agreement, the Estate is bound by the Agreement and the P.R. seeks the Court's direction, guidance, enforcement, and blessing on the procedure the Court wishes the P.R. to follow to

KB

finalize this only remaining issue of equitable division. The P.R. has not submitted any forms to the IRS because of the Defendant's behavior and baseless threats, and the P.R. seeks guidance and assistance from the Court as to how to procedurally comply. The Plaintiff is informed and believes this Court should enforce its Order regarding the tax refund to be received by each party and/or determine the amount due each party and require the parties to sign the appropriate documents necessary to receive the refund. In the event the Defendant refuses to execute any required document regarding the tax refund, the Plaintiff requests an order allowing the Clerk of Court to execute the same for her.

(2) Violation #2: Paragraph 10 of the Agreement - disparaging the other party or family members

In the same email referenced above, the Defendant made unfounded allegations and disparaging remarks against the Deceased and a family member, thereby further violating the Order.

(3) Violation #3: Paragraph 10 of the Agreement - restraining order

In the Agreement, the parties were restrained from contacting or communicating with the other. In violation of this provision of the Agreement, the Defendant appeared, without permission, in the middle of the night at the hospital room where David Harwell was hospitalized. Defendant had to be removed by hospital security. In the same email referenced above, the Defendant admitted her conduct.

KB

(4) <u>Violation #4</u>: **Paragraph 12 of the Agreement - waiver of any claims or rights in the estate of the other**

Immediately after the death of David Harwell, the Defendant threatened the family and the funeral home with litigation if it did not meet her "demands" regarding the funeral. These demands included the Defendant's insistence that she be allowed to participate in the Deceased's family's reception line at any visitation or burial and view the Deceased. (*See* **Exhibit** 5(a)). Defendant demanded of the funeral home that they include her as his wife in any obituary they sent to newspapers. (*See* **Exhibit** 5(c)). She attempted to, and did in fact, interfere with funeral arrangements by the Deceased's family, thus causing unnecessary inconvenience and stress for the family and the funeral home, who were having to deal with not only the death but also the 1000-year flood contributing to further burial issues. Under the family court order, the Defendant had no rights in the Deceased's estate, and the family and the P.R. in particular were responsible for all matters relating to the Deceased pursuant to § 62-3-701 of the South Carolina Code. Despite this fact, Defendant appeared at the funeral home and demanded that she be able to view the Deceased. The funeral home was uncomfortable with the situation because it had been instructed by the family and the P.R. that there would be no public viewing; thus, the funeral home contacted the P.R. regarding the Defendant's presence and demands. To avoid

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further disruption at the funeral home, the P.R. allowed the Defendant to have a limited supervised viewing of the Deceased. Defendant demanded that the funeral home include her name on any death certificate even though it had provided all information regarding the marital status to SCDHEC/vital statistics. The Defendant demanded removal of comments from the funeral home condolences section by a third party who tried to alert others of the marital status when posting their condolences.

Due to Defendant's continued interference and disregard of the order, and in an effort to comply with the Deceased's requests and avoid further unnecessary drama and emotional stress for the family, the P.R. had counsel advise Defendant that the visitation would be at the family's home on private property and that the funeral would be private for family. Counsel further informed Defendant that if she continued to interfere and defy the order and the requests of the Deceased and his family, she would be promptly removed from the family's home, and that law enforcement would be present.

In the same email referenced above (**Exhibit 4**), the Defendant admits her attempted interference with funeral arrangements causing further confusion and interference with the Deceased's funeral arrangements.

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The Defendant paid for and had published, both in print and online in *The State* and *The Sun News*, unauthorized obituaries misleading the public into believing that there was no family court order, and misleading the public into believing the Defendant was still residing as wife with the Deceased, who died on September 30, 2015, even though the Order was signed July 21, 2015, approving the mediated settlement Agreement and granting the Deceased and the Defendant the right to live separate and apart, and they were in fact living separate and apart. These unauthorized obituaries directed condolences to be sent to the Defendant's post office box in Myrtle Beach and memorials sent to an unauthorized recipient. These obituaries were not authorized by the funeral home, the P.R., or any beneficiary of the Deceased's Estate. The obituaries were specifically contrary to the instructions given by David Harwell to the P.R., the Deceased's counsel, Defendant's counsel, and the mediator, and there was no provision in the Agreement authorizing such. The Defendant's conduct was designed in an effort to specifically contravene and defy the direct instructions of the Deceased and to mislead the public as to the true status of their Family Court disposition and relationship status, and knowing full well that she had no interest in his Estate or any authority to publish anything on behalf of the Estate or the Deceased. Once the family learned of the publication of the unauthorized

obituaries, the P.R. through counsel attempted to have them removed from continued publication online. The P.R. had to contact the S.C. Bar to have its online "memorial" link to the unauthorized obituary corrected. Furthermore, the Defendant admitted this misconduct and even sent a bill to the P.R. demanding reimbursement for her publication of the unauthorized obituaries. (*Compare* **Exhibit 5** [unauthorized obituaries and demand for reimbursement by the Defendant], *with* **Exhibit 6** [authorized obituaries]). (*See* **Exhibit 5(a)** [a text message from the Defendant's phone number sent to the P.R. days after David Harwell's death wherein she threatens controversy and insists on being in any family reception line at visitation and burial]). Unbelievably, the Defendant made this ridiculous demand at the mediation, which was absolutely rejected by the Deceased. (*See* **Exhibit 5(b)** [redacted letter from the Defendant's family court attorney]). (*See* **Exhibit 5(c)** [Defendant email to funeral home demanding to be in obituary]).

(5) **Violation #5: Paragraph 11 of the Agreement - cell phone number released; Paragraph 8 of the Agreement - personal property owned by the Deceased**

Subsequent to the Deceased's death, the P.R. had responsibilities concerning the administration of the Estate, which included stopping any unnecessary bills of the Deceased that may be incurred. The P.R. went to a Verizon store in Florence, South Carolina, to request that any billing cease for the Deceased's cell phone number. It appears that the Defendant had never

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released David Harwell's cell phone number from her account, that the number was still in the Defendant's name, and that the Defendant had reported the Deceased's cell phone as stolen. While there, Verizon representatives advised the P.R. that they contacted the Defendant and that she was demanding the Deceased's cell phone. Rather than continue to deal with the Defendant's behavior and unnecessary confusion, the P.R. simply had Verizon wipe any personal information from the Deceased's cell phone and gave it to Verizon representatives. No cell phone bills have been received by the P.R. Verizon assured the P.R. that the Estate would receive no bills related to the Deceased's cell phone number or the phone.

(6) Violations #6, #7, and #8: Paragraph 8 - personal property owned by the Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other

#6: Upon information and belief, while David Harwell was hospitalized and on a respirator prior to his death, the Defendant in late September 2015 executed an online unauthorized change of address form that caused David Harwell's mail to be forwarded from his address at 312 Canal Street, North Myrtle Beach, SC, to Defendant's address at P.O. Box 7769, Myrtle Beach, SC. The P.R. discovered this unauthorized change of address in November 2015 and advised postal authorities that the Deceased's mail should not be forwarded to the Defendant's address.

Postal authorities corrected the same upon receiving the P.R.'s request. (*See* **Exhibit** 7 [copies of official United States Postal Service records received pursuant to Freedom of Information Act request showing the Defendant's COA (change of address) for her individually "IP" on or about 2-13-2015 shortly after the parties separated; then on 9-25-2015, an unauthorized entire family "FP," directing David Harwell's mail be sent to the Defendant's address; followed by the P.R.'s request to forward the Deceased's mail to Timberlane Drive in Florence, SC]).

#7: In late November 2015 (over a month and a half after the Deceased had died and after the P.R. was appointed), the P.R. received an official letter notification from U.S. postal authorities' change of address security division that another unauthorized change of address had been sent to them requesting David Harwell's mail be forwarded from Timberlane Drive, Florence, SC. (*See* **Exhibit** 8 [USPO change of address security division letter dated November 18, 2015]). In response to the letter, the P.R contacted local postal authorities at the Florence post office, and the authorities provided records regarding the unauthorized change of address request to have the mail forwarded to the Defendant's P.O. Box address in Myrtle Beach, SC. (*See* **Exhibit** 9 [indicating the Defendant's name and

HB

address]). The P.R. had postal authorities stop the change of address and contacted the U.S. Postal Inspector due to the Defendant's continued interference with the Deceased's mail and the P.R.'s concern regarding his fiduciary obligation and responsibilities as P.R. in administering the Deceased's Estate, including receiving and responding to the Deceased's mail, notices, bills, dividend checks, etc. and handling them as necessary. The P.R. advised the Postal Inspector about the outstanding issue concerning a joint tax refund check that had not been issued. The P.R. believed these change of address notices were done in an attempt to obtain the tax refund check but that the IRS had not even issued the same, as explained in Violation #1 above. The P.R. requested assistance from the Postal Inspector to retrieve any and all mail of the Deceased that the Defendant had improperly received, and advised the Inspector that he did not wish to cause the Defendant any harm but that her foolishness with interfering with the Deceased's mail needed to immediately stop and that the Defendant needed to immediately return any of the Deceased's mail.

#8: A few days before Christmas 2015, U.S. postal authorities sent another notification letter from the change of address security division advising that once again the

Defendant had submitted an unauthorized, improper change of address for David Harwell's mail at Timberlane Drive, Florence, SC, to be forwarded to the Defendant at her P.O. Box in Myrtle Beach, SC. (*See* Exhibit 10 [letter dated December 20, 2015 from the USPO change of address security division]). Once again, the P.R. contacted postal authorities in Florence, SC, who attempted to contact the Postal Inspector, and once again stopped the unauthorized change of address. Postal authorities again provided USPO records showing the Defendant had requested it. (*See* Exhibit 11 [U.S. post office records indicating unauthorized change of address by the Defendant to her P.O. box in Myrtle Beach]). On or about January 7, 2016, the P.R. again contacted the Postal Inspector regarding this incident and the previous incidents, and learned that they had not been successful in contacting the Defendant.

(7) **Violation #9: Paragraph 8 - Personal Property of Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other**

On or about December 21, 2015, the P.R. received a call from representative Baxter Hahn of Wells Fargo in Florence, SC, to which the Deceased had transferred most of his securities, retirement, and cash funds accounts as a result of the Deceased's residence in Florence, SC, rather than

in Myrtle Beach and the closing of Bank of America branches in Florence, SC. The Deceased previously had various accounts with Bank of America, but with the closing of Bank of America branches in Florence and the convenience of Wells Fargo in Florence, David Harwell had moved most of his accounts or funds from Bank of America to Wells Fargo/Baxter Hahn financial advisor. Mr. Hahn advised the P.R. that the Defendant called him, stated she was listed on one of the IRA accounts, and inquired as to the account status. The Defendant advised Mr. Hahn that the P.R. would be removed the following week. The Defendant left a voicemail falsely indicating that she was listed on the Deceased's account, which is attached hereto for the Court to hear. (*See* Exhibit 11(a)). The Defendant had no interest in any of these accounts per the Family Court's order. This conduct and interference constitute a clear violation of Order.

(8) **<u>Violation #10</u>: Paragraph 8 - Personal Property of the Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other**

On or about January 5, 2016, the P.R. received three separate notifications dated December 15, 2015, and December 16, 2015, from Computershare Trust Company (the former custodian of some of the Deceased's stock certificates). These notifications were sent to the Deceased's Timberlane Drive, Florence, SC address and notified that the records for the Deceased's

accounts now had a new address listing the Deceased's name but was now listing the Defendant's P.O. box in Myrtle Beach, SC. These were unauthorized changes of address, and the P.R. immediately notified Computershare Trust Co. by telephone and overnight letter. Computershare representatives advised the P.R. that they had recently issued two dividend checks, one on the BB&T stock for $2,295.00 and another dividend check for Bank of American stock for $17.40. (This $17.40 check is referenced in Exhibit 15 and was retrieved by U.S. Postal Inspector Moody from the Defendant's P.O. Box in Myrtle Beach, SC). The P.R. had not received those checks, except the $17.40 provided by the Postal Inspector, and Computershare representatives advised the P.R. that those checks had not been cashed and that Computershare now would require a letter in writing and probate court documents in order to change the address back to the correct address. The P.R. complied with Computershare's instructions and sent them an overnight letter with probate court documents, and on January 25, 2016, the P.R. received the reissued dividend checks. Not only has the Defendant's conduct interfered with the receipt of checks, but also this interference with the Deceased's mail affects receipt of estate tax return documents such as IRS Forms 1099 that need to be received. (*See* Exhibit 12 [consisting of three unauthorized change of address notices from Computershare Trust Co., which give the Defendant's P.O. box

Myrtle Beach, SC address but list the Deceased's name]). (*See* Exhibit 12(a) [overnight letter to Computershare Trust Company advising of fraudulent change of address]).

(9) <u>Violation #11</u>: Paragraph 8 - Personal Property of the Deceased; Paragraph 12 - waiver of any claims or rights in the estate of the other

Upon information and belief, the Defendant's interference with the Deceased's mail and the Estate's mail has made it difficult, if not impossible, for the Estate and the P.R. to accurately know whether any outstanding bills are due to creditors and to ensure the proper administration of the Estate. For example, the P.R. has received a delinquent water bill and learned that a property tax notice was not received, and it is difficult to ascertain what other mailings, notices, bills, checks, etc. may have been wrongly diverted. The failure to receive bills, notices, and other mailings could subject the Estate to unnecessary liability and loss, and the P.R. is charged with the fiduciary responsibility to take appropriate action to avoid such adverse consequences. The Defendant's interference with the equitable division and her conduct has caused enormous unnecessary disruption in the normal administration of the Estate, resulting in countless hours spent correcting addresses and searching for bills or notices that need attention. As an example, the Deceased was hospitalized prior to his death for

over a week, and no medical bills or Medicare billing summaries have been received.

On or about the night of January 10, 2016, the P.R. checked the mailbox at Timberlane Drive, Florence, SC, and found a letter from Palmetto GBA (the Medicare subcontractor) indicating a change of address had been received as a result of an unauthorized change of address. (*See* **Exhibit** 13). Also in the mailbox was a letter addressed to the Defendant at the Deceased's Timberlane address—which is not the Defendant's address—sent by Computershare, which was holding the Deceased's securities at one time. This letter was given to U.S. Postal Inspector L.R. Moody. (*See* **Exhibit** 14). The Defendant was not listed on any of the Deceased's accounts with Computershare and had no ownership of the same. Upon information and belief, the Defendant contacted Computershare with the Deceased's account information and, knowing Computershare would only send documents to the Deceased's address that was on file, had Computershare send the letter to her at the Timberlane address with the intent to have it forwarded to her P.O. Box in Myrtle Beach, SC.

On January 11, 2016, the P.R. met with Postal Inspector Moody and gave her the most recent documentation regarding the unauthorized change of address from the Timberlane address in Florence, SC. At that time, Inspector Moody

provided the attached mail of the Deceased that she had obtained from the Defendant's P.O. Box 7769 in Myrtle Beach, thereby confirming that the Deceased's mail was being received by the Defendant. (*See* **Exhibit** 15 [consisting of various letters addressed to the Deceased but sent to the Defendant's P.O. Box in Myrtle Beach or forwarded to the Defendant at her P.O. Box in Myrtle Beach, particularly (1) a Bank of America tax document and dividend check, (2) a Computershare letter, and (3) the Deceased's Merrill Lynch statement).

All mail of the Deceased should be immediately returned. The Plaintiff would also request as an additional sanction that the Defendant be required to provide under oath an accounting of all funds received by her that belong to the Deceased's Estate.

Upon information and belief, the United States Postal Service has become involved in the issue over the validity of the various forwarding authorizations executed by the Defendant herein. In order to complete the process of insuring that all the Plaintiff's mail is sent to the P.R. of his Estate, and that Defendant's mail is sent to her requested address, Plaintiff is requesting an Order declaring that all mail addressed to Honorable David W. Harwell, Judge David W. Harwell, The David W. Harwell Family, or David W. Harwell, or any variation thereof be sent to his address at Timberlane Drive, Florence, South Carolina.

(10) Violation #12: Paragraph 12 - waiver of any claims or rights in the estate of the other

On February 9, 2016, the P.R. learned through estate counsel that the Defendant had filed a second claim for $3,100,000 against the Estate with the probate court that was not served on the P.R. or the estate attorney. This claim asserted as its basis "PRENUPTIAL AGREEMENT" and attached the Defendant's unauthorized obituary bills. These claims of the Defendant are wholly invalid and improper, and the P.R. is disallowing and denying any and all claims of the Defendant filed against the Estate. (*See* **Exhibit** 16). The Defendant's conduct clearly violates the Family Court Order, and has affected the administration of the Estate and the P.R.'s efforts to accomplish the sale of real estate for which the P.R. has received verbal good faith offers that could be lost due to the Defendant's interference.

Her outrageous behavior and complete defiance and disregard of the Court's order warrant full contempt sanctions so that she will understand there are consequences for her behavior and to deter her from future additional violations.

The Defendant should be required to withdraw all claims submitted to the probate court and prohibited from further interference with the Deceased's Estate.

9. Based on the Defendant's behavior, the P.R. believes it is necessary to file this contempt action so that he can fulfill his fiduciary responsibilities to the Estate and to stop

the Defendant's intentional misconduct and behavior which are designed to interfere with the P.R.'s ability to manage the Estate; and the P.R. further wishes to fully comply with the court-approved equitable division of assets regarding the tax refund and seeks the Court's direction, guidance, and instructions because of the Defendant's wrongful threats and behavior.

10. The Plaintiff is informed and believes the Defendant should be held in contempt for each of her actions and punished accordingly.

11. The Plaintiff believes that due to the Defendant's conduct, she should be responsible for all attorney's fees and costs related to this matter.

12. The only beneficiaries of the Deceased's Estate are the P.R., who is also the Deceased's son, and William Baxter Harwell, the Deceased's other son, who has reviewed this Complaint and joins fully in the requested relief sought.

WHEREFORE, the Plaintiff, having set forth his complaint against the Defendant, would respectfully pray for an order as follows:

1. Holding the Defendant in contempt of court for each of her violations and punishing her appropriately;
2. Enforcing the Court's Order and the Agreement regarding the tax refund check, determining the amount due each party, giving the P.R. direction and guidance as to how to comply concerning the tax refund, requiring each party to execute any documents necessary to accomplish the division, and if necessary allowing the Clerk of Court to execute any documents required by the Defendant should she fail to execute the same;

3. Returning any and all mail of the Deceased or his Estate; and requiring all mail addressed to Honorable David W. Harwell, Judge David W. Harwell, The David W. Harwell Family, or David W. Harwell, or any variation thereof, be sent to his address at Timberlane Drive, Florence, South Carolina;
4. Requiring the Defendant to file an accounting under oath of any funds received that belong to the Deceased or his Estate; and remove any existing unauthorized online obituaries; and
5. Ordering the Defendant to withdraw all claims that she has submitted to the probate court and prohibiting her from further interference with the Deceased's Estate;
6. Awarding attorney's fees, costs, disbursements, and such other relief as the Court deems just and proper.

KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Florence, South Carolina

February 8, 2016

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ESTATE OF DAVID W. HARWELL	))))	IN THE PROBATE COURT TWELFTH JUDICIAL CIRCUIT CASE NO.: 2015-ES-21-00778 In re: (1) Petitioner's request for "adjudication as surviving spouse" (2) Petitioner's request for "amendment of death certificate"
Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-Party Defendant.	)	**THIRD PARTY SUMMONS**

FILED
2016 APR -1 PM 2:06
JONATHAN DOUGLAS HAR
PROBATE JUDGE
FLORENCE COUNTY, S.C.

TO THIRD PARTY DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Third-Party Complaint on the subscribers at 205 N. Irby Street, Florence, South Carolina, and 504 S. Coit Street, Florence, South Carolina within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Third-Party Complaint within

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the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

Kevin M. Barth
Barth, Ballenger & Lewis, LLP
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Florence, South Carolina 29503
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Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ESTATE OF DAVID W. HARWELL	)))	IN THE PROBATE COURT TWELFTH JUDICIAL CIRCUIT CASE NO.: 2015-ES-21-00778 In re: (1) Petitioner's request for "adjudication as surviving spouse" (2) Petitioner's request for "amendment of death certificate"
Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-Party Defendant.	)	**ANSWERS AND COUNTERCLAIMS; and THIRD-PARTY CLAIMS**

FILED
2016 APR -1 PM 2:06
JAMES COOPER JR.
CLERK OF COURT
FLORENCE COUNTY, S.C.

The Respondents Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, answers and responds as follows:

1. All allegations not specifically admitted are **DENIED**.
2. Paragraph 1 upon information and belief is admitted.
3. Paragraph 2 is admitted such that the Decedent David W. Harwell died on such date and was a resident of Florence, South Carolina, and his Estate is being administered by the Florence County Probate Court in estate file # 2015-ES-21-00778. Venue is proper in

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Florence County as to these Respondents individually and as P.R.; however, this Court lacks subject matter jurisdiction.

4. Paragraph 3 is admitted.
5. Upon information and belief, paragraph 4 is admitted.
6. Paragraph 5 is denied in that, in this instance, the South Carolina Family Court in Horry County has issued a Final Order disposing of any marital property rights of the Petitioner, and in which the Petitioner waived any claims or rights against the Estate. Furthermore, the Horry County Family Court specifically reserved jurisdiction to issue any subsequent orders necessary to accomplish the division of property, and it further ordered that failure to comply with its Order would constitute contempt of court. The Family Court has issued a Rule to Show Cause for Contempt based on the Petitioner's improper filing of these creditor claims in violation of the Family Court's Order and for other numerous violations of the Family Court's Order. This Court therefore lacks subject matter jurisdiction to establish any rights of the Petitioner in the Estate that would in any way be contrary or inconsistent to the Final Order of the Horry County Family Court and approved Agreement in *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691, a copy of which is attached hereto and is hereby incorporated by reference. **[*See* Exhibit 1]** Particularly, this Court lacks jurisdiction to adjudicate the Petitioner as a "surviving spouse," as contemplated under South Carolina probate law due to the binding final order of the Horry County Family Court.

   Furthermore, regarding the amendment of a death certificate, this Court lacks subject matter jurisdiction as such relief is not authorized by statute nor listed in the Probate Court's jurisdictional statute, S.C. Code Ann. § 62-1-302.

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7. Par. 6 is admitted upon information and belief.

8. Par. 7 is admitted to the extent the Decedent and the Petitioner separated on or about February 11, 2015, and did not resume living together as husband and wife. However, for purposes of the South Carolina Probate Code and designation as "surviving spouse," sections 62-2-507(a)(2) and 62-2-802 provide that divorce includes: "'Divorce or annulment' means any divorce or annulment or declaration of invalidity of a marriage or other event that would exclude the spouse as a surviving spouse in accordance with Section 62-2-802. ***It also includes a court order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death***. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section." S.C. Code Ann. § 62-2-507(a)(2) (emphasis added). Because there was a final, lawful, and valid family court order terminating all marital property rights and waiving any rights or claims against the Estate by the Petitioner, and because the parties were not living together as husband and wife at the time of the Decedent's death and had separated on or about February 11, 2015, as specified in paragraph 7 of the Petitioner's Petition, the Petitioner and the Decedent met the definition of "divorce" for purposes of section 62-2-507(a)(2). Additionally, section 62-2-802(b)(3) provides in relevant part "a surviving spouse does ***not*** include: . . . (3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death." (emphasis added). "Divorce" is defined differently under the South Carolina Probate

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Code as compared to the South Carolina Family Court statutes, and the Petitioner is ***not*** considered a "surviving spouse" under the South Carolina Probate Code. As such, and upon information and belief, the Petitioner and the Decedent were not "divorced" under South Carolina Family Court statutes and laws but were considered "divorced" for purposes of South Carolina Probate Law due to the final order of the family court approving the property settlement agreement; and the Petitioner is not therefore not considered a "surviving spouse" under South Carolina Probate Law.

9. Par. 8 is DENIED and specific reference to the Family Court order is hereby made, as that order sets forth specifically what was adjudicated, which included granting the Decedent the right to live separate and apart and issuing a Final Order approving a property settlement agreement which included a waiver by the Petitioner of all claims or rights against the Estate.

   NO decree of separate maintenance and support was issued. The Family Court order terminated all marital property rights of the Petitioner. Under section 62-2-802 of the South Carolina Code, the valid order of the Family Court terminated all marital property rights such that the Petitioner is **NOT** a "surviving spouse" under section 62-2-802. Section 62-2-507(a)(2) further provides "divorce or annulment" for purposes of "surviving spouse" includes a court order terminating all property rights or confirming equitable distribution between spouses.

10. Paragraph 9 is admitted.

11. Paragraph 10 is DENIED. Reference is craved to paragraph 8 above in this document. Reference is craved specifically to the language of section 62-2-802, which provides a surviving spouse does **NOT** include "an individual who was a party to a valid proceeding

concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses . . . ."

12. Paragraph 11 is DENIED in that the Petitioner is not a "surviving spouse" for purposes of South Carolina probate law and is not entitled to the relief sought nor to any claim or share of the Estate, to the extent she seeks such by implication. Additionally, reference is again craved to paragraph 8 above in this document for purposes of the South Carolina Probate Code's definition of "divorce" under section 62-2-507(a)(2). The obituary referenced was unauthorized by the Estate or the Personal Representative ("P.R."), and was submitted and prepared solely by the Petitioner without any authorization. The unauthorized obituary contained significant inaccuracies and misleading statements, and is significantly different from the authorized obituary.
13. Par. 12 is DENIED. The Petitioner is not a "surviving spouse" as set forth above under section 62-2-802, or section 62-2-507, or otherwise under the South Carolina Probate Code.
14. Par. 13 is DENIED.
15. Par. 14 is admitted to the extent that the Respondent Robert Bryan Harwell was the "informant" for information purposes given to the funeral home, which then, upon information and belief, submitted information to the South Carolina Department of Health and Environmental Control (DHEC). The remainder of par. 14 is DENIED. The death certificate was not prepared by the Respondent or by the funeral home, but upon information and belief was prepared by an employee of DHEC. The Respondent provided all lawful information and signed a South Carolina Certificate of Death Worksheet, which is attached hereto and incorporated by reference. **[*See* Exhibit 2]**

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Furthermore, a better explanation regarding the process for the issuance of a death certificate is set forth in the attached affidavit of the funeral home director. **[*See* Exhibit 3]** Both documents are made a part hereof and are incorporated by reference. The Respondent did not complete Exhibit B of the Petition; rather, upon information and belief, a DHEC employee completed it.

16. Par. 15 is admitted to the extent that the Respondent provided information on the DHEC worksheet referenced above, which bears the Respondent's signature and was signed and provided the relevant information several hours after the Respondent's father's death.
17. Par. 16 is DENIED.
18. As to Pars. 17 and 18, the Respondent craves reference to the exact language of the statutes cited therein.
19. Par. 19 is specifically **DENIED,** and the Respondent craves reference to the signed South Carolina Certificate of Death Worksheet that lists the Petitioner's name and marital status of the Decedent and that was signed and dated by the Respondent hours after his father's death. **[*See* Exhibit 1]** The Respondent truthfully provided all of the information on the Worksheet, including the name of Deborah Boggs and the information that the parties were married but separated at the time of the Respondent's father's death. The Respondent fully complied with the law and has been wrongfully accused of a felony crime by the Petitioner and the Third-Party Defendant. These supporting documents above have been provided to counsel for the Petitioner, but the Petitioner and her counsel have failed to investigate these frivolous allegations before filing the Petition and have persisted in those allegations notwithstanding the proof of the falsity of their allegations. These documents were submitted to the Petitioner's counsel on or about March 11, 2016,

and again on or about March 15, 2016, yet no voluntary dismissal with prejudice has been filed by the Petitioner or her counsel.

20. Par. 20 is DENIED.

21. Par. 21 is DENIED.

22. Par. 22 is DENIED.

23. The Respondents request that the Court **DENY** any "adjudication as a surviving spouse" to the Petitioner or relief sought under the Petitioner's first cause of action. The Respondents request that the Court **DENY** any "amendment of death certificate" to the Petitioner or any relief sought under the Petitioner's second cause of action. The Respondents further request that all claims against him be dismissed with prejudice and with costs and attorney's fees awarded to the Respondents.

24. This Court lacks subject matter jurisdiction over the relief sought under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP), and particularly see par. 6 above in this document and should be dismissed.

25. The Respondents allege as to all claims of the Petitioner the following affirmative defenses: res judicata, waiver, estoppel, unclean hands, release, accord, and satisfaction, fraud, illegality, laches, law of the case, and payment.

26. The Respondents request that all of the Petitioner's claims be dismissed with costs and attorney's fees.

FOR A FIRST COUNTERCLAIM AGAINST THE PETITIONER AND CLAIM AGAINST THE THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, PA, AND DEIRDRE W. EDMONDS, INDIVIDUALLY:

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(South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 *et seq.*)

27. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

28. The Third-Party Defendant Edmonds is upon information and belief a South Carolina licensed attorney doing business as Law Office Deirdre W. Edmonds, PA in the State of South Carolina and at all relevant times was acting both individually and in her professional capacity and on behalf of herself and as agent for the PA and for the Petitioner. Upon information and belief, the Third-Party Defendant is a resident of Horry County, South Carolina, and has filed and signed unfounded pleadings containing allegations against the Estate and in a related pleading against the Personal Representative individually.

29. The allegations presented by both the Petitioner and her attorney, the Third-Party Defendant, have no basis in law or fact. The Petitioner and the Third-Party Defendant have filed and persisted in these claims in knowing violation of the Horry County Family Court Final Order, which was a valid family court order. The Petitioner and the Third-Party Defendant have persisted in these frivolous claims for "adjudication as surviving spouse" and "amendment of death certificate" having full knowledge of a binding family court final order terminating all marital property rights of the Petitioner and a waiver of all claims against the Estate by the Petitioner; and further knowing that the Respondent fully complied with DHEC reporting requirements and the law and that the Respondent was not guilty of the felony crime alleged against him in a public filing on the public record. The Petitioner and the Third-Party Defendant filed the claims without any

reasonable investigation or documentation, did not contact the funeral home regarding the DHEC worksheet signed by the Respondent, and/or upon information and belief, made no FOIA request to DHEC or other reasonable investigation regarding the Respondent's compliance prior to instituting this action, and they have persisted in filing false, frivolous, baseless, defamatory, and libelous claims, notwithstanding the receipt of Exhibits 2 and 3.

30. Prior to any filings, the Petitioner and the Third-Party Defendant were well aware of the Final Order and waiver of all claims against the Estate by the Petitioner (even referencing a family court order in one of the pleadings), as well as the pending Order and Rule to Show Cause for Contempt complaint filed against the Petitioner. Also, the Third-Party Defendant, due to her knowledge of an existing family court order and a rule to show cause for contempt, should have had a reasonable concern about the validity of any claims of the Petitioner. Despite their knowledge, the Petitioner and the Third-Party Defendant chose to file three (3) summons and complaints against the Estate and against the P.R. individually and---even after being alerted by the Respondent's counsel of the Final Order and pending Rule to Show Cause and given documentation refuting the claims---to persist in those claims knowing they lacked basis in law and fact.

31. No reasonable attorney or person would make such frivolous claims and file such frivolous pleadings. Persisting in this manner of litigation with no good faith basis or reasonable argument constitutes bad faith warranting appropriate sanctions under section 15-36-10 of the South Carolina Frivolous Civil Proceedings Sanctions Act.

32. Both the Petitioner and the Third-Party Defendant initiated the three summons and complaints merely to continue to harass and injure the Estate, its beneficiaries, and the

P.R. individually and/or to delay and improperly interfere with administration of the Estate.

33. The Petitioner and the Third-Party Defendant have failed to comply with the duties and conditions outlined in the statute.

34. In addition to the dismissal of all claims with costs, the Respondents seek all sanctions allowed under S.C. Code Ann. § 15-36-10(G) including but not limited to the following: (1) reasonable attorney's fees and costs for the time spent by the Respondents, travel expenses, and any other reasonable consequential expenses; (2) an order requiring the Petitioner and the Third-Party Defendant to pay a reasonable fine to the Court; and (3) injunctive relief designed to deter future frivolous action.

35. Pursuant to § 15-36-10, the Respondents request that the Court impose a sanction on the Petitioner and the Third-Party Defendant for violating the provisions of the South Carolina Frivolous Civil Proceedings Sanctions Act; and pursuant to § 15-36-10(H), that upon the imposition of such sanctions, the Court report its findings to the South Carolina Commission of Lawyer Conduct.

FOR A SECOND COUNTERCLAIM AND CLAIM AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Civil Conspiracy)

36. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

37. The Petitioner and the Third-Party Defendants have joined together to conspire and willfully aid and abet each other to knowingly violate a valid family court final order, and

to deliberately cause disruption and interference with the administration of the Estate. Knowing their conduct is costly and injurious to the Estate and Robert Bryan Harwell individually, the Petitioner and the Third-Party Defendants have joined and aided each other for the specific purpose of injuring and causing special damages to the Estate, and to Robert Bryan Harwell individually.

38. The Third-Party Defendant Edmonds owed the Respondents an independent duty under Rule 11, SCRCP, an independent duty under S.C. Code Ann. § 15-36-10, and a duty to not assist in the knowing and willful violation of a lawful, valid South Carolina Family Court order, and breached these duties in pursuing the instant litigation and not withdrawing any of the claims contained in the three summons and complaints. Alternatively, upon information and belief, the Third-Party Defendant acted in her own personal interest and motivation outside the scope of her representation of the Petitioner.

39. The Estate and Robert Bryan Harwell individually have suffered special damages as a direct and proximate result of the civil conspiracy. The conduct of both the Petitioner and the Third-Party Defendant was willful, wanton, and reckless.

40. The Respondents Estate and Robert Bryan Harwell individually both seek actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

FOR A THIRD CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Abuse of Process)

41. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

42. The Petitioner and the Third-Party Defendants had ulterior purposes and performed willful acts in the use of the process not proper in the regular course of the proceeding.

43. The Petitioner and the Third-Party Defendants filed and had served on the Respondents unfounded pleadings not based in law or fact, notwithstanding knowledge of a valid family court order and other documentation of which the Petitioner and the Third-Party Defendant were aware, and they have persisted in those pleadings and their actions constitute an abuse of process.

44. The improper or ulterior motives or purposes of the Petitioner and the Third-Party Defendants were to (1) extort or coerce money from the Estate, (2) coerce the Estate in an attempt to obtain an improper collateral advantage in the pending family court contempt proceeding, and (3) further cause unnecessary disruption to the Estate and distress to the beneficiaries and extract some sort of revenge or vendetta against the Estate and its beneficiaries.

45. The Respondents have suffered actual damages as a direct and proximate result of the conduct of both the Petitioner and the Third-Party Defendants.

46. The Petitioner's and the Third-Party Defendants' conduct was willful, wanton, and reckless.

47. The Respondents Estate and Robert Bryan Harwell individually both seek actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

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FOR A FOURTH CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Libel, Libel Per Se, and Defamation Per Se)

48. The Respondent Robert Bryan Harwell realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants. The Respondent asserts this claim individually.

49. Robert Bryan Harwell is a citizen and resident of Florence, South Carolina, and enjoyed a good name and reputation, both personally and professionally, having previously served as an attorney for approximately twenty years in Florence and having currently served as a federal district judge in the District of South Carolina for over eleven years.

50. The Petitioner and the Third-Party Defendants knowingly and willfully published a false and defamatory statement in a summons and petition filed in the Florence County Probate Court against the Respondent Robert Bryan Harwell, both individually and as the Personal Representative of his father's estate, accusing the Respondent of a felony crime in violation of the statutory laws of the State of South Carolina. ~~[See Exhibit 4]~~

51. The Petitioner and the Third-Party Defendant have published a written false and defamatory statement accusing the Respondent of a felony crime in their public filings and have persisted with such false and malicious accusations even after having been provided with contrary evidence.

52. The statement accused the Respondent of violating the criminal laws of the State of South Carolina, committing a felony offense, and being dishonest in providing information concerning his deceased father. Specifically, the Petitioner and the Third-Party

Defendants accused the Respondent of violating section 44-63-161(A)(2) of the South Carolina Code and that he was therefore guilty of a felony.

53. The statement made and published to third parties through a public filing by the Petitioner and the Third-Party Defendants is and was false as it pertains to the Respondent.

54. The said statement as set forth above was published with knowledge of its falsity or with a reckless disregard of its truth or falsity.

55. Upon information and belief, the Third-Party Defendants not only failed to properly investigate the veracity of the statement but also had obvious reasons to doubt the veracity of the source of the statement because the Third-Party Defendant simply relied upon Deborah Harwell, whom the Third-Party knew or should have known had gone through contentious family court proceedings with the Decedent David W. Harwell, and further knew a family court Order and Rule to Show Cause and Complaint for Contempt were pending and set to be heard by a family court judge. In light of these facts, the Third-Party Defendant should have had obvious reasons to doubt the veracity of her client and should have had a high degree of awareness of the probable falsity of the accusation, and purposefully avoided the truth.

56. The Respondent realleges paragraphs 15 and 19 above and the exhibits referenced therein, which were provided to the Petitioner and to the Third-Party Defendant, who have continued to persist in this false and defamatory statement, notwithstanding the documentation provided to them.

57. The statement as set forth above was published with actual or implied malice.

58. The above statement is libelous per se or on its face, and it exposes the Respondent to hatred, contempt, and ridicule.

59. Upon information and belief, the publication was unprivileged and made to third parties, here the public via the public record, and no such privilege exists. Upon information and belief, the statements were made in pleadings filed in direct violation of a valid court order prohibiting such a claim against the Estate, and as such should not enjoy any common law privilege. Furthermore, no such privilege exists when the defamatory statement is made to a court that does not have subject matter jurisdiction over the claims or causes of action, which includes the defamatory statement against the Respondent. As more thoroughly explained in paragraph 6 above, the Probate Court did not have subject matter jurisdiction. Additionally, a privilege should not apply because the false accusation was neither relevant nor pertinent nor necessary to the issues in the case.

60. The Respondent has suffered damages, and damages are presumed for libel per se. The Respondent has suffered damages as a direct and proximate result of the Petitioner's and the Third-Party Defendant's publication, conduct, and continued persistence in these false, defamatory accusations. These damages include but are not limited to: loss of personal and professional reputation, embarrassment, and mental suffering and emotional distress.

61. The Respondent seeks actual damages (in excess of $5,000.00) joint and several against the Petitioner and the Third-Party Defendant, and seeks punitive damages against the Petitioner and the Third-Party Defendant for their willful, wanton, and reckless conduct.

COUNTERCLAIM AGAINST THE PETITIONER

HB MPE

(Outrage)

62. The Respondent Robert Bryan Harwell realleges the allegations set forth above against the Petitioner.

63. The Respondent incorporates and makes a part hereof the Rule to Show Cause for Contempt and the Complaint for Contempt filed in the Horry County Family Court in *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691. [*See* **Exhibit 4**]

64. The Respondent individually asserts the claim.

65. The Petitioner, through her conduct as set forth in the Complaint for Contempt family court pleading, intentionally or recklessly has inflicted severe emotional distress or was certain or substantially certain that such distress would result from her conduct.

66. The Petitioner's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

67. The Petitioner's actions caused the Respondent severe emotional distress.

68. The emotional distress suffered by the Respondent was so severe that no reasonable person could be expected to endure it.

69. As a direct and proximate result, the Respondent has suffered actual damages in excess of $5,000.00.

70. The Respondent believes he is entitled to punitive damages for such willful, reckless, and wanton conduct.

CLAIM AGAINST THE THIRD-PARTY DEFENDANTS

MB WPE

(Outrage)

71. The Respondent Robert Bryan Harwell realleges the allegations set forth above against the Third-Party Defendants. The Respondent individually asserts this claim.

72. The Third-Party Defendants have knowingly and willfully assisted in the violation of a lawful family court order by filing summons and petitions asserting creditor claims on behalf of Deborah Harwell with full knowledge of the existence of a lawful family court order specifically prohibiting such claims.

73. The Third-Party Defendants have, upon information and belief, filed a third summons and petition attempting to change Deborah Harwell's status for purposes of the South Carolina Probate Code and laws in direct violation of a lawful family court order prohibiting such. Upon information and belief, the Petitioner is not a "surviving spouse" under the South Carolina Probate Code due to the final family court order referenced earlier in this pleading.

74. The Third-Party Defendants have persisted in false and defamatory allegations of criminal conduct against the Respondent, notwithstanding having been presented documentation as previously set forth above.

75. The Third-Party Defendants through their conduct described above have intentionally or recklessly inflicted severe emotional distress or were certain or substantially certain that such distress would result from their conduct.

76. The Third-Party Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

77. The Third-Party Defendants' actions caused the Respondent severe emotional distress.

78. The emotional distress suffered by the Respondent was so severe that no reasonable person could be expected to endure it.

79. As a direct and proximate result, the Respondent has suffered actual damages.

80. The Respondent believes he is entitled to punitive damages for such willful, reckless, and wanton conduct.

WHEREFORE, the Respondents, having set forth their answers and counterclaims and third-party claims, seek the following relief:

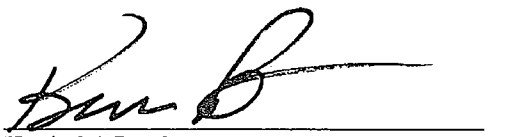
(1) Dismissal with prejudice of all of the Petitioner's claims;

(2) Full sanctions and relief provided for under the South Carolina Frivolous Civil Proceedings Sanctions Act against the Third-Party Defendants and the Petitioner;

(3) On behalf of the Estate, an award of actual damages joint and several against the Petitioner and the Third-Party Defendants, and punitive damages on each counterclaim and claim against the Petitioner and the Third-Party Defendants, along with costs and attorney's fees;

(4) On behalf of Robert Bryan Harwell individually, an award of actual damages joint and several against the Petitioner and the Third-Party Defendants, and punitive damages on each counterclaim and claim against the Petitioner and the Third-Party Defendants, along with costs and attorney's fees; and

(5) A jury trial on each of the Respondent's counterclaims or claims, to the extent permitted by law.



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Attorneys for the Respondent

Florence, South Carolina

3-31, 2016

HB

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number 15 034683

NAME OF DECEDENT
For use by physician or Institution

David Walker Harwell

Items 1-23c To Be Completed/Verified By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-36-2469
4a. AGE-Last Birthday (Years): 83
4b. UNDER 1 YEAR: Months / Days
4c. UNDER 1 DAY: Hours / Minutes
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1932
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOS, SC
7a. RESIDENCE-STATE: South Carolina
7c. COUNTY: Florence
7e. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.:
7f. ZIP CODE: 29506
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN US ARMED FORCES? ☒ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage): Deborah Boggs
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1389 Lazor Place Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions)
IF DEATH OCCURRED IN HOSPITAL: ☒ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing Home/Long term care facility ☐ Decedent's home ☐ Other (Specify)
15. FACILITY NAME (If not institution, give street and number): McLeod Regional Medical Center of the Pee-Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire - Dowling Funeral Home, Inc. 2402 S. Irby St. Florence, SC 29505
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT:
23. LICENSE NUMBER (Of Licensee):
23a. EMBALMER (Signature): Daniel Benton
23b. EMBALMER LICENSE NUMBER: 3559
23c. LICENSE NUMBER (Of Facility): 888

Items 24-49 To Be Completed By: MEDICAL CERTIFIER

ITEMS 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
24. DATE PRONOUNCED DEAD (MM/DD/YYYY):
25. TIME PRONOUNCED DEAD:
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable):
27. LICENSE NUMBER:
28. DATE SIGNED (mm/dd/yyyy):
29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): September 30, 2015
30. ACTUAL OR PRESUMED TIME OF DEATH: 12:58 PM
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)
Approximate Interval Onset to death

32. PART I. Enter the chain of events - disease, injuries, or complications - that directly caused the death. DO NOT enter terminal events: cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.
IMMEDIATE CAUSE (Final disease or condition resulting in death): a. ____ Due to (or as a consequence of):
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST: b. ____ Due to (or as a consequence of): c. ____ Due to (or as a consequence of): d. ____ Due to (or as a consequence of):
PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.
33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☐ Natural ☐ Homicide ☐ Accident ☐ Pending Investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Spell Month):
39. TIME OF INJURY:
40. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area):
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY: State: City or Town: County: Street & Number: Apartment Number: Zip Code:
43. DESCRIBE HOW INJURY OCCURRED:
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)
45. CERTIFIER (Check only one)
☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier:
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)
46a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
47. TITLE OF CERTIFIER
48. LICENSE NUMBER
49. DATE CERTIFIED (MM/DD/YYYY)
50. FOR REGISTRAR ONLY- DATE FILED (MM/DD/YYYY)

Items 51-55 To Be Completed By: Funeral Director

51. DECEDENT'S EDUCATION- Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
52. DECEDENT OF HISPANIC ORIGIN?-Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/ Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/ Latina.
☒ No, not Spanish/Hispanic/Latino/Latina
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify)
53. DECEDENT'S RACE-(Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED"): Judge-Lawyer
55. KIND OF BUSINESS/INDUSTRY: Legal

Amendment Code
Amendment Number:
Date:
User ID:
BRTP NO. 202982

DHEC 670
Rev. 2004

Exhibit 2

STATE OF SOUTH CAROLINA, COUNTY OF FLORENCE Estate of David W. Harwell Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually And as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondent(s).	)	IN THE PROBATE COURT CASE NO. 2015-ES21-00778 AFFIDAVIT OF SANDY DOWLING

Personally appeared before me, Sandy Dowling, who first duly sworn, deposes and says as follows:

1. I am the Associate Director at Stoudenmire Dowling Funeral Home in Florence, South Carolina, and in that capacity handled the funeral arrangement for and the funeral of Honorable David W. Harwell.

2. As part of my duties, I am required to fill out a computer form provided to us by State of South Carolina Department of Health and Environmental Control, known as an Abstract Certificate of Death. From the information entered by me, DHEC issues the Certified Certificate of Death.

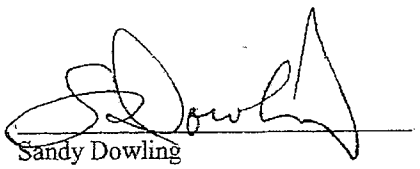
3. Attached to this Affidavit is the form I completed in conjunction with the death of Judge Harwell. The information was given to me by his son, R. Bryan Harwell.

4. The form that was completed and submitted by me named the surviving spouse as "Deborah Boggs", in accordance with our general procedures.

5. I, as the author of this document, have nothing to do with the actual completion of the Certified Certificate of Death and the issuance of same. That task is accomplished by an employee at DHEC.

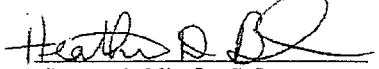
Exhibit 3

FURTHER DEPONENT SAITH NOT!



Sandy Dowling

SWORN TO before me
This 10th day of March, 2016



Notary Public for S.C.
Commission Expires: 2-12-23

D H E C
PROMOTE PROTECT PROSPER

SOUTH CAROLINA CERTIFICATE OF DEATH WORKSHEET

DATE OF DEATH: (MM/DD/YYYY) 9/30/2015

1. DECEDENT'S LEGAL NAME (Include AKAs, if any) (First, Middle, Last)	2. SEX	3. SOCIAL SECURITY NUMBER
David Walker Harwell	Male	250-36-2469

4a. AGE-Last Birthday (Years)	4b. UNDER 1 YEAR Months	Days	4c. UNDER 1 DAY Hours	Minutes	5. DATE OF BIRTH (MM/DD/YYYY)	6. BIRTHPLACE (City and State or Foreign Country)
83	0	0			1/8/1932	South Carolina

7a. RESIDENCE-STATE	7b. COUNTY	7c. CITY OR TOWN
South Carolina	Florence County	Florence

7d. STREET AND NUMBER	7e. APT. NO.	7f. ZIP CODE	7g. INSIDE CITY LIMITS?
2208 Timberlane Drive		29506	☐ Yes ☑ No

8. EVER IN US ARMED FORCES?	9. MARITAL STATUS AT TIME OF DEATH	10. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)
☑ Yes ☐ No	☐ Married ☑ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown	Deborah Boggs

11. FATHER'S NAME (First, Middle, Last)	12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)
Baxter Hicks Harwell Sr.	Lacy Rankin

13a. INFORMANT'S NAME	13b. RELATIONSHIP TO DECEDENT	13c. MAILING ADDRESS (Street and Number, City, State, Zip Code)
Bryan Harwell	Son	1389 Lazar Place, Florence, South Carolina 29501

14. PLACE OF DEATH (Check only one: see instructions)

IF DEATH OCCURRED IN A HOSPITAL: ☑ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival

IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify) _____

15. FACILITY NAME (If not institution, give street and number)	16. CITY OR TOWN, STATE AND ZIP CODE	17. COUNTY OF DEATH
McLeod Regional Medical Center	Florence, South Carolina 29506	Florence

18. METHOD OF DISPOSITION ☑ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify) _____

19. PLACE OF DISPOSITION (Name of cemetery, crematory, other place): Mount Hope Cemetery

20. LOCATION-CITY, TOWN, AND STATE: Florence, South Carolina

21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire-Dowling Funeral Home, 2402 South Irby Street, Florence, South Carolina 29505

22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT

23. LICENSE NUMBER (Of Licensee): 3783

23a. EMBALMER (Signature)

23b. EMBALMER LICENSE NUMBER

23c. LICENSE NUMBER (Of Facility): 888

51. DECEDENT'S EDUCATION-Check the box that best describes the highest degree or level of school completed at the time of death.

- ☐ 8th grade or less
- ☐ 9th-12th grade; no diploma
- ☐ High school graduate or GED completed
- ☐ Some college credit, but no degree
- ☐ Associate degree (e.g., AA, AS)
- ☐ Bachelor's degree (e.g., BA, AB, BS)
- ☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
- ☑ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)

52. DECEDENT OF HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.

- ☑ No, not Spanish/Hispanic/Latino/Latina
- ☐ Yes, Mexican, Mexican American, Chicano/Chicana
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino/Latina

(Specify) _____

53. DECEDENT'S RACE. (Check one or more races to indicate what the decedent considered himself or herself to be)

- ☑ White
- ☐ Black or African American
- ☐ American Indian or Alaska Native (Name of the enrolled or principal tribe) _____
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian (Specify) _____
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander (Specify) _____
- ☐ Other (Specify) _____

54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED.")
Judge/Lawyer

55. KIND OF BUSINESS/INDUSTRY
Legal

The information above was reviewed and found to be correct.

R. Bryan Harwell (Signature of Informant) (Required)

Sept. 30, 2015 (Date)

BRTP NO.

The collection and reporting to DHEC of information contained on the South Carolina Death Certificate are exempt from HIPAA regulations (see 45 CFR §§ 160.203 (c), 164.512 (b) (1). However, state law provides protection against the unauthorized release of confidential information from the death certificate.

DHEC-0670C (07/2010)

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ESTATE OF DAVID W. HARWELL	)))	IN THE PROBATE COURT TWELFTH JUDICIAL CIRCUIT CASE NO.: 2015-ES-21-00778 In re: (1) Petitioner's request for "adjudication as surviving spouse" (2) Petitioner's request for "amendment of death certificate"
Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-Party Defendant.	)	**MOTION TO DISMISS BOTH CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION;** **OR, ALTERNATIVELY, MOTION TO DISMISS BOTH CLAIMS FOR FAILURE TO STATE A CLAIM;** **OR, ALTERNATIVELY, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO BOTH CLAIMS; AND** **MOTION FOR RULE 11 SANCTIONS**

FILED
2016 APR -1 PM 2:03

To: Deirdre W. Edmonds, attorney for the Petitioner.

You will please take notice that as soon as counsel can be heard, the Respondents hereby move for dismissal of all of the Petitioner's claims based on lack of subject matter jurisdiction, Rule 12(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP); or, alternatively, for dismissal for failure to state a claim, Rule 12(b)(6), SCRCP; or, alternatively, for judgment on the pleadings; and for sanctions pursuant to Rule 11, SCRCP.

Certification by counsel: Movant counsel certifies that prior to filing the instant motions, they have attempted in good faith to resolve the same, and further consultation would serve no useful purpose.

KB MRE

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Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

RESPONDENT'S SUPPORTING MEMORANDUM

The Respondent asserts the basis for the motion to dismiss for lack of subject matter jurisdiction, the motion to dismiss for failure to state a claim, and the motion for judgment on the pleadings is the following. As more specifically alleged in the responsive pleadings of the Respondent, the Petitioner and the Decedent (David W. Harwell) were previously before the Horry County Family Court, *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691, wherein the Family Court ordered and approved an agreement disposing of all property rights and matters concerning the marriage, as set forth more particularly in the Final Order and Agreement of the Petitioner and the Decedent. In the Final Order and Agreement, the Petitioner waived any and all claims or rights against the Estate, and such Order was a final, binding, unappealed order. Furthermore, the Horry County Family Court specifically reserved jurisdiction to issue any subsequent orders necessary to accomplish the division of property, and it further ordered that failure to comply with its Order would constitute contempt of court. The Family Court has issued a Rule to Show Cause for Contempt based on the Petitioner's improper filing of these creditor claims in violation of the Family Court's Order and for other numerous violations of the Family Court's Order. This Court can take judicial notice of the Family Court filings and orders, which are attached to the responsive pleadings in this case or will be made available to the Court. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014); *Sun v. Matyushevsky*, No. 2015-UP-146, 2015 WL 1249074, at *1 (S.C. Ct. App. Mar. 18, 2015) (unpublished decision).

Furthermore, the Court lacks jurisdiction to amend the death certificate and such jurisdiction is not granted to the Probate Court under section 62-1-302 of the South Carolina Code.

Further, the Respondent seeks sanctions pursuant to Rule 11, SCRCP, based on the filing of frivolous pleadings or other papers and for making frivolous arguments. These sanctions should include, but not be limited to, any and all reasonable expenses, costs, and attorney's fees.

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(843) 667-6613

Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO.: 2015-ES-21-00778

IN THE MATTER OF:

The Estate of David W. Harwell

In re:
(1) Creditor claim of $3.1 million dollars concerning the prenuptial agreement
(2) Creditor claim of $1,457.25 concerning the obituary publication

Deborah B. Harwell,

Petitioner,

v.

Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell,

Respondent,

v.

Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually,

Third-Party Defendant.

MOTION TO DISMISS BOTH CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION;

OR, ALTERNATIVELY, MOTION TO DISMISS BOTH CLAIMS FOR FAILURE TO STATE A CLAIM;

OR, ALTERNATIVELY, MOTION FOR JUDGMENT ON THE PLEADINGS AS TO BOTH CLAIMS; AND

MOTION FOR RULE 11 SANCTIONS

FILED
2015 APR -1 PM 2:08

To: Deirdre W. Edmonds, attorney for the Petitioner.

You will please take notice that as soon as counsel can be heard, the Respondent hereby moves for dismissal of all of the Petitioner's claims based on lack of subject matter jurisdiction, Rule 12(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP); or, alternatively, for dismissal for failure to state a claim, Rule 12(b)(6), SCRCP; or, alternatively, for judgment on the pleadings; and for sanctions pursuant to Rule 11, SCRCP.

Certification by counsel: Movant counsel certifies that prior to filing the instant motions, they have attempted in good faith to resolve the same, and further consultation would serve no useful purpose.

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Attorneys for the Respondent

Florence, South Carolina

3-31-, 2016

RESPONDENT'S SUPPORTING MEMORANDUM

The Respondent asserts the basis for the motion to dismiss for lack of subject matter jurisdiction is that, as more specifically alleged in the responsive pleadings of the Respondent, the Petitioner and the Decedent (David W. Harwell) were previously before the Horry County Family Court, *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691, wherein the Family Court ordered and approved an agreement disposing of all property rights and matters concerning the marriage, as set forth more particularly in the Final Order and Agreement of the Petitioner and the Decedent. In the Final Order and Agreement, the Petitioner waived any and all claims or rights against the Estate, and such Order was a final, binding, unappealed order. Furthermore, the Horry County Family Court specifically reserved jurisdiction to issue any subsequent orders necessary to accomplish the division of property, and it further ordered that failure to comply with its Order would constitute contempt of court. The Family Court has issued a Rule to Show Cause for Contempt based on the Petitioner's improper filing of these creditor claims in violation of the Family Court's Order and for other numerous violations of the Family Court's Order. This Court can take judicial notice of the Family Court filings and orders, which are attached to the responsive pleadings in this case or will be made available to the Court. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014); *Sun v. Matyushevsky*, No. 2015-UP-146, 2015 WL 1249074, at *1 (S.C. Ct. App. Mar. 18, 2015) (unpublished decision).

Alternatively, regarding the motion to dismiss for failure to state a claim and the motion for judgment on the pleadings as to the $3.1 million dollar claim concerning the prenuptial

KB
GPE

agreement, the Court again can take judicial notice of the above referenced Family Court orders and filings and should dismiss Petitioner's claims based on those orders.

Additionally, regarding the motion to dismiss for failure to state a claim and the motion for judgment on the pleadings as to the $1,457.25 concerning the obituary, the Court can again take judicial notice of the above referenced Family Court orders and filings and should dismiss Petitioner's claims based on those orders. Further, regarding the Petitioner's pleading, she attached as an integral part of that pleading the unauthorized obituary and her bills, which indicated the Petitioner as the customer, i.e., the party responsible for paying the bill.

Further, the Respondent seeks sanctions pursuant to Rule 11, SCRCP, based on the filing of frivolous pleadings or other papers and for making frivolous arguments. These sanctions should include, but not be limited to, any and all reasonable expenses, costs, and attorney's fees.

Kevin M. Barth
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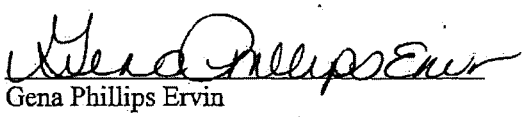
P.O. Box 107
Florence, South Carolina 29503
(843) 662-6301



Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
P.O. Box 2527
Florence, South Carolina 29503-2527
(843) 667-6613

Attorneys for the Respondent

Florence, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**CASE NUMBER: 2015-ES-21-00778**
COUNTY OF FLORENCE	)	

ESTATE OF DAVID W. HARWELL

Deborah B. Harwell,

Petitioner,

vs.

Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,

Respondents .

SUMMONS

FILED
2016 MAY -2 PM 6:12

TO: THE ABOVE-NAMED RESPONDENTS(S):

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Petition in this action, which was filed in the Florence County Probate Court. A copy of the Amended Petition is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorney for the Petitioner within thirty (30) days after service hereof, exclusive of the day of service, at P.O. Box 16064, Surfside Beach, SC 29587.

YOU ARE GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Petition.

LAW OFFICE OF DEIRDRE W. EDMONDS, PA

Deirdre W. Edmonds, Esquire
S.C. Bar No.: 10201
P.O. Box 16064
Surfside Beach, SC 29587
Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

April 28, 2016
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**CASE NUMBER: 2015-ES-21-00778**
COUNTY OF FLORENCE	)	
ESTATE OF DAVID W. HARWELL		
Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents .	)	**AMENDED PETITION**

FILED
2016 MAY -2 PM 5:00

The Petitioner above named, Deborah B. Harwell, by and through her undersigned legal counsel will show unto this Court the following:

1. Petitioner Deborah B. Harwell (hereinafter "Mrs. Harwell") is a citizen and resident of the State of South Carolina, County of Horry.

2. David W. Harwell (hereinafter "Decedent") died on September 30, 2015 and, at the time of his death, the Decedent was a citizen and resident of the State of South Carolina, County of Florence. The Decedent's estate is being administered in the Florence County Probate Court in estate file number 2015-ES-21-00778. Therefore, venue is proper in this county and court.

3. Respondent Robert Bryan Harwell (hereinafter "Respondent Harwell") is a citizen and resident of the State of South Carolina, County of Florence, is the Decedent's son and is also the duly appointed personal representative of the Decedent's estate.

4. Respondent South Carolina Department of Health and Environmental Control Division of Vital Records, located in Columbia, South Carolina, is the official state agency charged with recording the birth, marriage and death records in the State of South Carolina.

5. This Honorable Court has exclusive, original jurisdiction over all subject matter related to estates of decedents, including the determination of heirs and successors of decedents, pursuant to S.C. Code Section 62-1-302. Therefore, this Court has subject matter jurisdiction over the determination of a decedent's next of kin and issues related to a decedent's death certificate.

For a First Cause of Action
(Adjudication as Surviving Spouse)

6. Mrs. Harwell and the Decedent were married in the County of Florence, State of South Carolina, on November 21, 2001 (See copy of Marriage Certificate attached hereto as Exhibit "A" and incorporated herein by reference).

7. Mrs. Harwell and the Decedent separated on or about February 11, 2015; however, they never divorced.

8. A Final Order granting the Decedent and Mrs. Harwell separate maintenance and support was entered by the Hon. James A. Spruill on July 21, 2015; however, such Final Order did not terminate the status of the Decedent and Mrs. Harwell as husband and wife. Thus, pursuant to S.C. Code Section 62-2-802, the decree of separate maintenance was not a divorce for purposes of said section.

9. The Decedent died on September 30, 2015 (See copy of Death Certification, commonly referred to as a "Death Certificate", attached hereto as Exhibit "B" and incorporated herein by reference).

10. S.C. Code Section 62-2-802 provides that "an individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death." Conversely, S.C. Code Section 62-2-802 provides that an individual who is married to a decedent and who is not divorced from the decedent or whose marriage to the decedent has not been annulled at the time of death is a surviving spouse.

11. At the time of his death, the Decedent and Mrs. Harwell were not divorced and their marriage has not been annulled. At the time of his death, the Decedent and Mrs. Harwell were legally married and their status as husband and wife had not been terminated. Therefore, Mrs. Harwell is the Decedent's surviving spouse

(See copy of Obituary attached hereto as Exhibit "C" and incorporated herein by reference).

12. There is clear and convincing proof to adjudicate Mrs. Harwell as the surviving spouse of the Decedent, as evidenced by Exhibits "A", "B", and "C", attached hereto and incorporated herein by reference, and as provided under S.C. Code Section 62-2-802.

13. Therefore, Mrs. Harwell asks this Court to adjudicate her as the Decedent's surviving spouse.

For a Second Cause of Action
(Amendment of Death Certificate)

14. The Decedent's son, Respondent Harwell was the "Informant" on the Decedent's Death Certificate. (See Exhibit "B" attached hereto and incorporated herein by reference).

15. In providing information required on the Death Certificate as to the Decedent's marital status, Respondent Harwell stated that the Decedent was "married but separated". (See Exhibit "B" attached hereto).

16. In providing information required on the Death Certificate as to the surviving spouse's name, Respondent Harwell stated the surviving spouse's name as "NA" despite having full and complete knowledge of the identity of Mrs. Harwell as

the Decedent's surviving spouse and despite having full and complete knowledge that the surviving spouse's name was not "NA". (See Exhibit "B" attached hereto).

17. S.C. Code Section 44-63-161(A)(2) provides that "it is unlawful for a person . . . to wilfully make a false statement in a certificate, record or report required to be filed . . . or to wilfully supply false information intending that the information be used in the preparation . . . of a certificate . . . ." SC Code §44-63-161(A)(2).

18. Further, S.C. Code Section 44-63-161(B) provides that "a person who violates . . . item [44-63-161(A)] (2) . . . is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both." SC Code §44-63-161(B).

19. Respondent Harwell, individually, knowingly and wilfully supplied false information in the preparation of the Decedent's Death Certificate in violation of S.C. Code Section 44-63-161(A)(2).

20. According to applicable state law and/or regulation, the South Carolina Department of Health and Environmental Control Division of Vital Records is unable to allow Mrs. Harwell to request a correction of the Decedent's Death Certificate. The Division of Vital Records has advised Mrs. Harwell that Respondent Harwell as the "informant" on the Death Certificate can request the

correction or, if Respondent Harwell is unwilling to make such request, an order of the Court is required in order for the Division of Vital Records to correct the Decedent's Death Certificate.

21. Respondent Harwell, either individually or as Personal Representative of the Decedent's estate, should be ordered to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate since he wilfully and knowingly provided the false statement about the surviving spouse's name intending the false information to be used in the preparation of the Death Certificate.

22. In the alternative, Mrs. Harwell requests that this Honorable Court order the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate.

For a Third Cause of Action
(Award of Attorney's Fees and Costs)

23. S.C. Code Section 62-1-111 provides that the court may award costs and expenses, including reasonable attorney's fees, to any party by another party or from the estate that is the subject of the controversy as justice and equity may require. SC Code §62-1-111.

24. Petitioner requests that the Court award her costs and expenses, including Petitioner's attorney's fees, incurred in this action against the Respondents.

WHEREFORE, Petitioner respectfully prays as follows:

1. For an order finding the Petitioner, Deborah B. Harwell, is the surviving spouse of David W. Harwell; and

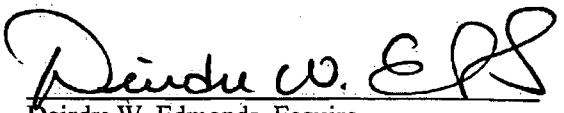
2. Ordering Respondent Harwell, individually or as Personal Representative of the Estate of David W. Harwell, to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse or, in the alternative, ordering the South Carolina Department of Health and Environmental Control Division of Vital Records to correct the Decedent's Death Certificate to include Mrs. Harwell as the Decedent's surviving spouse on said Death Certificate;

3. Awarding Petitioner costs and expenses, including reasonable attorney's fees, incurred in this action against the Respondents; and

4. For such further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF DEIRDRE W. EDMONDS, PA



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S.C. Bar No.: 10201
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Telephone (843) 232-0654
Facsimile (843) 232-0655
Attorney for Petitioner

April 28, 2016
Surfside Beach, South Carolina

EXHIBIT "A"

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

148334 — LICENSE NUMBER

HORRY — COUNTY

GROOM-NAME (FIRST) (MIDDLE) (LAST)	BIRTHDATE (MONTH, DAY, YEAR)	AGE
(1) DAVID WALKER HARWELL	(2a) JANUARY 08 1932	(2b)

BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)
(3) SOUTH CAROLINA	(4) CAUCASIAN	(5) 12 CANAL STREET

CITY, TOWN OR LOCATION	COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)
(5a) N. MYRTLE BEACH	(5c) HORRY	(5d) SOUTH CAROLINA	(6) 3rd

BRIDE-NAME (FIRST) (MIDDLE) (LAST)	BIRTHDATE (MONTH, DAY, YEAR)	AGE
(7) DEBORAH BOGGS JOHNSON	(8a) MARCH 25 1950	(8b)

BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)
(9) NORTH CAROLINA	(10) CAUCASIAN	(11) 930 HOBCAW COURT

CITY, TOWN OR LOCATION	COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)
(11a) MYRTLE BEACH	(11c) HORRY	(11d) SOUTH CAROLINA	(12) 5th

MAIDEN NAME OF BRIDE (If Different From Above)

(13) BOGGS

Application for a license was filed with this court at 13:49P M., on the 15th day of NOVEMBER, 2001. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 15:23P M., this the 19th day of NOVEMBER, A.D. 2001.

DIANE BUFFKIN-CREEL — Signature of Issuing Officer

JUDGE OF PROBATE — Title of Issuing Officer

GROOM-Signature (14) David W. Harwell

BRIDE-Signature (15) Deborah B. Johnson

I certify that the above named persons were married on (16) November (MONTH) 21st (DAY) (YEAR) 2001

Place of Marriage (17) Florence (CITY) Florence (COUNTY) SOUTH CAROLINA

OFFICIANT-Signature (18a)

OFFICIANT-Title (18b) S.C. Circuit Court Judge

OFFICIANT-Mailing Address (18c) MSCD-180 N. Irby St, Florence, S.C. 29501

250-36-2469 246-80-7992

DHEC 0681 (12/1998)

BRIDE/GROOM COPY

EXHIBIT "B"

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-034683

DECEDENT'S NAME: *DAVID WALKER HARWELL* SEX: MALE
AKA's: NA SOCIAL SECURITY NUMBER: 250-36-2469
ARMED FORCES: YES
DATE OF BIRTH: JANUARY 08, 1932 AGE: 83 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT COUNTY OF DEATH: FLORENCE
NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE INC, FLORENCE, SC 29506
PLACE OF DISPOSITION: MOUNT HOPE CEMETERY
DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2208 TIMBERLANE DRIVE, FLORENCE, FLORENCE COUNTY, SC, 29506
PLACE OF BIRTH: SOUTH CAROLINA MARITAL STATUS: MARRIED BUT SEPARATED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: BAXTER HICKS HARWELL SR
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LACY RANKIN
INFORMANT'S NAME: BRYAN HARWELL RELATIONSHIP: SON
MAILING ADDRESS: 1389 LAZAR PLACE, FLORENCE, SC, 29501
FUNERAL HOME: STOUDENMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC 29505
FUNERAL DIRECTOR: JOHN F. DOWLING LICENSE NUMBER: 1283
EMBALMER'S NAME: DANIEL BENTON LICENSE NUMBER: 3559
ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 30, 2015 MANNER OF DEATH: NATURAL
ACTUAL OR PRESUMED TIME OF DEATH: 1305
CAUSE OF DEATH - PART I
ANOXIC BRAIN INJURY
VENTRICULAR ARRHYTHMIA
ISCHEMIC CARDIOMYOPATHY
CORONARY ARTERY DISEASE
OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? NO AUTOPSY PERFORMED? NO AUTOPSY AVAILABLE? NA
DATE OF INJURY: NA TIME OF INJURY: NA INJURY AT WORK? NA
PLACE OF INJURY: NA
LOCATION OF INJURY: NA
HOW THE INJURY OCCURRED?
NA

CERTIFIER NAME AND TITLE: DR. NICOLETTE NASO LICENSE NUMBER: 15707
CERTIFIER'S ADDRESS: NA
DATE FILED: OCTOBER 13, 2015
DATE OF ISSUANCE: OCTOBER 14, 2015
SPECIAL INSTRUCTIONS:
NA

SC04641899

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC
PROMOTE PROTECT PROVIDE
South Carolina Department of Health & Environmental Control

EXHIBIT "C"

David Harwell (1932 - 2015)

Notice

The Honorable Judge
David W Harwell
January 8, 1932 - September 30, 2015
North Myrtle Beach

The Honorable SC Chief Justice (Retired) David W. Harwell, 83, passed away on September 30, 2015. He was born in Mars Bluff, SC on January 8, 1932. For the past 21-years, he resided in Horry County. Before death, he was a resident of the Methodist Manor in Florence.

Harwell was the son of Lacy Rankin and Baxter Hicks Harwell, Sr. He graduated from McClenaghan High School in Florence in 1950. He attended the University of Texas and received his law degree from the USC School of Law in 1958. He was a staunch Gamecock fan. He was in private practice with his brother Hicks and served in the SC House of Representatives from 1963 to 1973. He benefited the Pee Dee through serving as Chairman of the Agricultural Study Committee and being a strong member of the Ways and Means Committee. He was known to all as a Southern Statesman with a deep bellow of infectious laughter.

The Judge's favorite work was sitting in the state's county courthouses, listening to cases, working with juries and striking up a conversation with anyone nearby. He was friends with every sector of society, the rich, and the poor, black or white. The Chief loved people and was special to many.

He joined the SC Supreme Court in 1980 and was elected Chief Justice in 1991. He worked to get mediation into SC as a means of dispute resolution. He approved the use of genetic testing in criminal cases and recognized battered women's syndrome as a defense in court. He tried the first death penalty case after the death penalty was restored in 1976. He was most proud of his work to allow cameras in SC courtrooms because he believed it to be a deterrent to crime. Upon retirement he gained a reputation as a national mediator, arbitrator and speaker on ADR. He was a mediator trainer for the US Department of Justice at the National Advocacy Center. After leaving public service, he was associated with Nelson-Mullins and lastly with the Bell Legal Group in Georgetown.

His military service was unique in that he served in the Navy, Army and US Airforce.

The Judge worked hard and played hard. In his youth, he was an outstanding baseball player. During his adult life, he loved golf and enjoyed the Surf Club FP Supper Club. He was a noted hunter and traveled every year to Canada. He was a lover of animals and had a pet deer, German Shepherd, two racoons and every other animal he could catch during his lifetime. He enjoyed riding his Harley Motorcycle. He liked to call turkey and was known for carrying around a to-go plate on the front seat of the car to feed the animals along the way. The NC Mountains held a special place in his heart with many close friends. He and his wife Debbie traveled the world for the past 18-years and enjoyed friends everywhere.

Of all of his accomplishments, he was most proud of his children, both with law degrees. He is survived by Baxter (Teresa) Harwell; The Honorable US District Judge Bryan (Debbie) Harwell; his wife, Deborah Boggs Harwell; step-son Mike Putnam (Becca); four grandchildren, Walker, Mason, Sarah Nell and Carson Harwell and three step-grandchildren Grayson, Chase and Cohen Putnam; a sister Anne Hill and brothers The Honorable Retired Judge Jim (Kay) Harwell and Joe Harwell; two sister-in-law's Nancy and Margaret Harwell; plus many nieces and nephews. He was pre-deceased by his parents; two brothers, the Rev. Lacy Harwell and the Honorable Judge Hicks Harwell; a brother-in-law Glenn Hill; and a 12-year old son David Walker Harwell, Jr. His constant companion, a black Lab Boo Bear, will greatly miss him.

He was a member at First Presbyterian Church in Myrtle Beach, Hopewell Presbyterian Church in Florence and attended the Ocean Drive Presbyterian Church in NMB.

A memorial service will be held at a later date.

Memorials can be made to either Hopewell Presbyterian Church, 5314 Old River Rd., Florence, SC 29505 or to the Grandfather Home for Children, 158 Hickory Nut Gap Road, Banner Elk, NC 28601. Condolences can be made on-line at www.stoudenmiredowling.com or by mailing address: PO Box 7769, Myrtle Beach, SC 29572.

Funeral Home

Hide Share Remember with My Memorials Twitter Funeral Home Email

Guest Book

"Debbie and Family, So sorry for your loss. He was a fine..."
- Tim and Lou Jane Chest...

View Sign

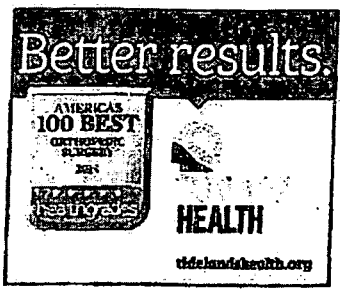
Sign in with Facebook

YOUR SEARCH HISTORY

Records for Harwell in SC

- View 3 Birth Records
- View 62 Marriage Records
- View 1 Ancestry Death Records

Sponsored by ancestry



STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)))	IN THE PROBATE COURT TWELFTH JUDICIAL CIRCUIT CASE NO.: 2015-ES-21-00778
ESTATE OF DAVID W. HARWELL		In re: (1) Petitioner's request for "adjudication as surviving spouse" (2) Petitioner's request for "amendment of death certificate"
Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondents, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-Party Defendant.	)	**ANSWERS AND COUNTERCLAIMS TO AMENDED PETITION; and THIRD-PARTY CLAIMS**

FILED
2016 MAY 16 PM 3:44
JUDGE PROBATE COURT
FLORENCE COUNTY, S.C.

The Respondents Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, answers and responds to the Amended Petition as follows:

1. All allegations not specifically admitted are **DENIED**.
2. Paragraph 1 upon information and belief is admitted.
3. Paragraph 2 is admitted such that the Decedent David W. Harwell died on such date and was a resident of Florence, South Carolina, and his Estate is being administered by the

Florence County Probate Court in estate file # 2015-ES-21-00778. Venue is proper in Florence County as to these Respondents individually and as P.R.; however, this Court lacks subject matter jurisdiction.

4. Paragraph 3 is admitted.
5. Upon information and belief, paragraph 4 is admitted.
6. Paragraph 5 is denied in that, in this instance, the South Carolina Family Court in Horry County has issued a Final Order disposing of any marital property rights of the Petitioner, and in which the Petitioner waived any claims or rights against the Estate. Furthermore, the Horry County Family Court specifically reserved jurisdiction to issue any subsequent orders necessary to accomplish the division of property, and it further ordered that failure to comply with its Order would constitute contempt of court. The Family Court has issued a Rule to Show Cause for Contempt based on the Petitioner's improper filing of these creditor claims in violation of the Family Court's Order and for other numerous violations of the Family Court's Order. This Court therefore lacks subject matter jurisdiction to establish any rights of the Petitioner in the Estate that would in any way be contrary or inconsistent to the Final Order of the Horry County Family Court and approved Agreement in *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691, a copy of which is attached hereto and is hereby incorporated by reference. **[*See* Exhibit 1 attached to the original Answer and Counterclaim to the original Petition]** Particularly, this Court lacks jurisdiction to adjudicate the Petitioner as a "surviving spouse," as contemplated under South Carolina probate law due to the binding final order of the Horry County Family Court.

Furthermore, regarding the amendment of a death certificate, this Court lacks subject matter jurisdiction as such relief is not authorized by statute nor listed in the Probate Court's jurisdictional statute, S.C. Code Ann. § 62-1-302.

7. Paragraph 6 is admitted upon information and belief.

8. Paragraph 7 is admitted to the extent the Decedent and the Petitioner separated on or about February 11, 2015, and did not resume living together as husband and wife. However, for purposes of the South Carolina Probate Code and designation as "surviving spouse," sections 62-2-507(a)(2) and 62-2-802 provide that divorce includes: "'Divorce or annulment' means any divorce or annulment or declaration of invalidity of a marriage or other event that would exclude the spouse as a surviving spouse in accordance with Section 62-2-802. ***It also includes a court order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death.*** A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section." S.C. Code Ann. § 62-2-507(a)(2) (emphasis added). Because there was a final, lawful, and valid family court order terminating all marital property rights and waiving any rights or claims against the Estate by the Petitioner, and because the parties were not living together as husband and wife at the time of the Decedent's death and had separated on or about February 11, 2015, as specified in paragraph 7 of the Petitioner's Petition, the Petitioner and the Decedent met the definition of "divorce" for purposes of section 62-2-507(a)(2). Additionally, section 62-2-802(b)(3) provides in relevant part "a surviving spouse does ***not*** include: . . . (3) an individual who was a party to a valid proceeding concluded by an order purporting to

terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death." (emphasis added). "Divorce" is defined differently under the South Carolina Probate Code as compared to the South Carolina Family Court statutes, and the Petitioner is ***not*** considered a "surviving spouse" under the South Carolina Probate Code. As such, and upon information and belief, the Petitioner and the Decedent were not "divorced" under South Carolina Family Court statutes and laws but were considered "divorced" for purposes of South Carolina Probate Law due to the final order of the family court approving the property settlement agreement; and the Petitioner is not therefore not considered a "surviving spouse" under South Carolina Probate Law.

9. Paragraph 8 is DENIED and specific reference to the Family Court order is hereby made, as that order sets forth specifically what was adjudicated, which included granting the Decedent the right to live separate and apart and issuing a Final Order approving a property settlement agreement which included a waiver by the Petitioner of all claims or rights against the Estate. **NO** decree of separate maintenance and support was issued. The Family Court order terminated all marital property rights of the Petitioner. Under section 62-2-802 of the South Carolina Code, the valid order of the Family Court terminated all marital property rights such that the Petitioner is **NOT** a "surviving spouse" under section 62-2-802. Section 62-2-507(a)(2) further provides "divorce or annulment" for purposes of "surviving spouse" includes a court order terminating all property rights or confirming equitable distribution between spouses.

10. Paragraph 9 is admitted.

11. Paragraph 10 is DENIED. Reference is craved to paragraph 8 above in this document. Reference is craved specifically to the language of section 62-2-802, which provides a surviving spouse does **NOT** include "an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between spouses . . . ."

12. Paragraph 11 is DENIED in that the Petitioner is not a "surviving spouse" for purposes of South Carolina probate law and is not entitled to the relief sought nor to any claim or share of the Estate, to the extent she seeks such by implication. Additionally, reference is again craved to paragraph 8 above in this document for purposes of the South Carolina Probate Code's definition of "divorce" under section 62-2-507(a)(2). The obituary referenced was unauthorized by the Estate or the Personal Representative ("P.R."), and was submitted and prepared solely by the Petitioner without any authorization. The unauthorized obituary contained significant inaccuracies and misleading statements, and is significantly different from the authorized obituary.

13. Paragraph 12 is DENIED. The Petitioner is not a "surviving spouse" as set forth above under section 62-2-802, or section 62-2-507, or otherwise under the South Carolina Probate Code.

14. Paragraph 13 is DENIED.

15. Paragraph 14 is admitted to the extent that the Respondent Robert Bryan Harwell was the "informant" for information purposes given to the funeral home, which then, upon information and belief, submitted information to the South Carolina Department of Health and Environmental Control (DHEC). The remainder of Paragraph 14 is DENIED. The death certificate was not prepared by the Respondent or by the funeral home, but

upon information and belief was prepared by an employee of DHEC. The Respondent provided all lawful information and signed a South Carolina Certificate of Death Worksheet, which is attached hereto and incorporated by reference. **[*See* Exhibits 2 and 3 attached to the original Answer and Counterclaim to the original Petition]** Furthermore, a better explanation regarding the process for the issuance of a death certificate is set forth in the attached affidavit of the funeral home director. **[*See* Exhibits 2 and 3 attached to the original Answer and Counterclaim to the original Petition]** Both documents are made a part hereof and are incorporated by reference. The Respondent did not complete Exhibit B of the Petition; rather, upon information and belief, a DHEC employee completed it.

16. Paragraph 15 is admitted to the extent that the Respondent provided information on the DHEC worksheet referenced above, which bears the Respondent's signature and was signed and provided the relevant information several hours after the Respondent's father's death.

17. Paragraph 16 is DENIED.

18. As to Paragraphs 17 and 18, the Respondent craves reference to the exact language of the statutes cited therein.

19. Paragraph 19 is specifically **DENIED,** and the Respondent craves reference to the signed South Carolina Certificate of Death Worksheet that lists the Petitioner's name and marital status of the Decedent and that was signed and dated by the Respondent hours after his father's death. **[*See* Exhibits 2 and 3 attached to the original Answer and Counterclaim to the original Petition]** The Respondent truthfully provided all of the information on the Worksheet, including the name of Deborah Boggs and the information

that the parties were married but separated at the time of the Respondent's father's death. The Respondent fully complied with the law and has been wrongfully accused of a felony crime by the Petitioner and the Third-Party Defendant. These supporting documents above have been provided to counsel for the Petitioner, but the Petitioner and her counsel have failed to investigate these frivolous allegations before filing the Petition and have persisted in those allegations notwithstanding the proof of the falsity of their allegations. These documents were submitted to the Petitioner's counsel on or about March 11, 2016, and again on or about March 15, 2016, yet no voluntary dismissal with prejudice has been filed by the Petitioner or her counsel.

20. Paragraph 20 is DENIED.
21. Paragraph 21 is DENIED.
22. Paragraph 22 is DENIED.
23. Paragraph 23 is admitted to the extent that said paragraph correctly cites the applicable law. To the extent that this paragraph alleges that Petitioner should be entitled to this relief, Respondent denies same.
24. Paragraph 24 is denied.
25. The Respondents request that the Court **DENY** any "adjudication as a surviving spouse" to the Petitioner or relief sought under the Petitioner's first cause of action. The Respondents request that the Court **DENY** any "amendment of death certificate" to the Petitioner or any relief sought under the Petitioner's second cause of action. The Respondent further requests that the Court **DENY** Petitioner's request for an award of attorney's fees and costs. The Respondents further request that all claims be dismissed with prejudice and with costs and attorney's fees awarded to the Respondents.

26. This Court lacks subject matter jurisdiction over the relief sought under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure (SCRCP), and particularly see Paragraph 6 above in this document and should be dismissed.

27. The Respondents allege as to all claims of the Petitioner the following affirmative defenses: res judicata, waiver, estoppel, unclean hands, release, accord and satisfaction, fraud, illegality, laches, law of the case, and payment.

28. The Respondents request that all of the Petitioner's claims be dismissed with costs and attorney's fees.

FOR A FIRST COUNTERCLAIM AGAINST THE PETITIONER AND CLAIM AGAINST THE THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, PA, AND DEIRDRE W. EDMONDS, INDIVIDUALLY:

(South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 *et seq.*)

29. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

30. The Third-Party Defendant Edmonds is upon information and belief a South Carolina licensed attorney doing business as Law Office Deirdre W. Edmonds, PA in the State of South Carolina and at all relevant times was acting both individually and in her professional capacity and on behalf of herself and as agent for the PA and for the Petitioner. Upon information and belief, the Third-Party Defendant is a resident of Horry County, South Carolina, and has filed and signed unfounded pleadings containing

allegations against the Estate and in a related pleading against the Personal Representative individually.

31. The allegations presented by both the Petitioner and her attorney, the Third-Party Defendant, have no basis in law or fact. The Petitioner and the Third-Party Defendant have filed and persisted in these claims in knowing violation of the Horry County Family Court Final Order, which was a valid family court order. The Petitioner and the Third-Party Defendant have persisted in these frivolous claims for "adjudication as surviving spouse" and "amendment of death certificate" having full knowledge of a binding family court final order terminating all marital property rights of the Petitioner and a waiver of all claims against the Estate by the Petitioner; and further knowing that the Respondent fully complied with DHEC reporting requirements and the law and that the Respondent was not guilty of the felony crime alleged against him in a public filing on the public record. The Petitioner and the Third-Party Defendant filed the claims without any reasonable investigation or documentation, did not contact the funeral home regarding the DHEC worksheet signed by the Respondent, and/or upon information and belief, made no FOIA request to DHEC or other reasonable investigation regarding the Respondent's compliance prior to instituting this action, and they have persisted in filing false, frivolous, baseless, defamatory, and libelous claims, notwithstanding the receipt of Exhibits 2 and 3.

32. Additionally, even subsequent to being added as a Third-Party Defendant, Edmonds, filed the Amended Petition (to which this Answer responds) on behalf of the Respondent, again with full and complete knowledge of the Family Court Order, and Exhibits referred to herein.

33. Prior to any filings, the Petitioner and the Third-Party Defendant were well aware of the Final Order and waiver of all claims against the Estate by the Petitioner (even referencing a family court order in one of the pleadings), as well as the pending Order and Rule to Show Cause for Contempt complaint filed against the Petitioner. Also, the Third-Party Defendant, due to her knowledge of an existing family court order and a rule to show cause for contempt, should have had a reasonable concern about the validity of any claims of the Petitioner. Despite their knowledge, the Petitioner and the Third-Party Defendant chose to file three (3) summons and complaints against the Estate and against the P.R. individually and---even after being alerted by the Respondents' counsel of the Final Order and pending Rule to Show Cause and given documentation refuting the claims---to persist in those claims knowing they lacked basis in law and fact.

34. No reasonable attorney or person would make such frivolous claims and file such frivolous pleadings. Persisting in this manner of litigation with no good faith basis or reasonable argument constitutes bad faith warranting appropriate sanctions under section 15-36-10 of the South Carolina Frivolous Civil Proceedings Sanctions Act.

35. Both the Petitioner and the Third-Party Defendant initiated the three summons and complaints merely to continue to harass and injure the Estate, its beneficiaries, and the P.R. individually and/or to delay and improperly interfere with administration of the Estate.

36. The Petitioner and the Third-Party Defendant have failed to comply with the duties and conditions outlined in the statute.

37. In addition to the dismissal of all claims with costs, the Respondents seek all sanctions allowed under S.C. Code Ann. § 15-36-10(G) including but not limited to the following:

(1) reasonable attorney's fees and costs for the time spent by the Respondents, travel expenses, and any other reasonable consequential expenses; (2) an order requiring the Petitioner and the Third-Party Defendant to pay a reasonable fine to the Court; and (3) injunctive relief designed to deter future frivolous action.

38. Pursuant to § 15-36-10, the Respondents request that the Court impose a sanction on the Petitioner and the Third-Party Defendant for violating the provisions of the South Carolina Frivolous Civil Proceedings Sanctions Act; and pursuant to § 15-36-10(H), that upon the imposition of such sanctions, the Court report its findings to the South Carolina Commission of Lawyer Conduct.

FOR A SECOND COUNTERCLAIM AND CLAIM AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Civil Conspiracy)

39. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

40. The Petitioner and the Third-Party Defendants have joined together to conspire and willfully aid and abet each other to knowingly violate a valid family court final order, and to deliberately cause disruption and interference with the administration of the Estate. Knowing their conduct is costly and injurious to the Estate and Robert Bryan Harwell individually, the Petitioner and the Third-Party Defendants have joined and aided each other for the specific purpose of injuring and causing special damages to the Estate, and to Robert Bryan Harwell individually.

41. The Third-Party Defendant Edmonds owed the Respondents an independent duty under Rule 11, SCRCP, an independent duty under S.C. Code Ann. § 15-36-10, and a duty to not assist in the knowing and willful violation of a lawful, valid South Carolina Family Court order, and breached these duties in pursuing the instant litigation and not withdrawing any of the claims contained in the three summons and complaints. Alternatively, upon information and belief, the Third-Party Defendant acted in her own personal interest and motivation outside the scope of her representation of the Petitioner.

42. The Estate and Robert Bryan Harwell individually have suffered special damages as a direct and proximate result of the civil conspiracy. The conduct of both the Petitioner and the Third-Party Defendants was willful, wanton, and reckless.

43. The Respondents Estate and Robert Bryan Harwell individually both seek actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

FOR A THIRD CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Abuse of Process)

44. The Respondents reallege the allegations set forth above against both the Petitioner and the Third-Party Defendants.

45. The Petitioner and the Third-Party Defendants had ulterior purposes and performed willful acts in the use of the process not proper in the regular course of the proceeding.

46. The Petitioner and the Third-Party Defendants filed and had served on the Respondents unfounded pleadings not based in law or fact, notwithstanding knowledge of a valid

family court order and other documentation of which the Petitioner and the Third-Party Defendant were aware, and they have persisted in those pleadings and their actions constitute an abuse of process.

47. The improper or ulterior motives or purposes of the Petitioner and the Third-Party Defendants were to (1) extort or coerce money from the Estate, (2) coerce the Estate in an attempt to obtain an improper collateral advantage in the pending family court contempt proceeding, and (3) further cause unnecessary disruption to the Estate and distress to the beneficiaries and extract some sort of revenge or vendetta against the Estate and its beneficiaries.

48. The Respondents have suffered actual damages as a direct and proximate result of the conduct of both the Petitioner and the Third-Party Defendants.

49. The Petitioner's and the Third-Party Defendants' conduct was willful, wanton, and reckless.

50. The Respondents Estate and Robert Bryan Harwell individually both seek actual damages joint and several against the Petitioner and the Third-Party Defendants (in excess of $5,000.00) and also punitive damages against the Petitioner and the Third-Party Defendants in an appropriate sum.

FOR A FOURTH CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Libel, Libel Per Se, and Defamation Per Se)

51. The Respondent Robert Bryan Harwell realleges the allegations set forth above against both the Petitioner and the Third-Party Defendants. The Respondent asserts this claim individually.

52. Robert Bryan Harwell is a citizen and resident of Florence, South Carolina, and enjoyed a good name and reputation, both personally and professionally, having previously served as an attorney for approximately twenty years in Florence and having currently served as a federal district judge in the District of South Carolina for over eleven years.

53. The Petitioner and the Third-Party Defendants knowingly and willfully published a false and defamatory statement in a summons and petition filed in the Florence County Probate Court against the Respondent Robert Bryan Harwell, both individually and as the Personal Representative of his father's estate, accusing the Respondent of a felony crime in violation of the statutory laws of the State of South Carolina.

54. The Petitioner and the Third-Party Defendant have published a written false and defamatory statement accusing the Respondent of a felony crime in their public filings and have persisted with such false and malicious accusations even after having been provided with contrary evidence.

55. The statement accused the Respondent of violating the criminal laws of the State of South Carolina, committing a felony offense, and being dishonest in providing information concerning his deceased father. Specifically, the Petitioner and the Third-Party Defendants accused the Respondent of violating section 44-63-161(A)(2) of the South Carolina Code and that he was therefore guilty of a felony.

56. The statement made and published to third parties through a public filing by the Petitioner and the Third-Party Defendants is and was false as it pertains to the Respondent.

57. The said statement as set forth above was published with knowledge of its falsity or with a reckless disregard of its truth or falsity.

58. Upon information and belief, the Third-Party Defendants not only failed to properly investigate the veracity of the statement but also had obvious reasons to doubt the veracity of the source of the statement because the Third-Party Defendant simply relied upon Deborah Harwell, whom the Third-Party knew or should have known had gone through contentious family court proceedings with the Decedent David W. Harwell, and further knew a family court Order and Rule to Show Cause and Complaint for Contempt were pending and set to be heard by a family court judge. In light of these facts, the Third-Party Defendant should have had obvious reasons to doubt the veracity of her client and should have had a high degree of awareness of the probable falsity of the accusation, and purposefully avoided the truth.

59. The Respondent realleges paragraphs 15 and 19 above and the exhibits referenced therein, which were provided to the Petitioner and to the Third-Party Defendant, who have continued to persist in this false and defamatory statement, notwithstanding the documentation provided to them.

60. The statement as set forth above was published with actual or implied malice.

61. The above statement is libelous per se or on its face, and it exposes the Respondent to hatred, contempt, and ridicule.

62. Upon information and belief, the publication was unprivileged and made to third parties, here the public via the public record, and no such privilege exists. Upon information and belief, the statements were made in pleadings filed in direct violation of a valid court order prohibiting such a claim against the Estate, and as such should not enjoy any common law privilege. Furthermore, no such privilege exists when the defamatory statement is made to a court that does not have subject matter jurisdiction over the claims

or causes of action, which includes the defamatory statement against the Respondent. As more thoroughly explained in paragraph 6 above, the Probate Court did not have subject matter jurisdiction. Additionally, a privilege should not apply because the false accusation was neither relevant nor pertinent nor necessary to the issues in the case.

63. The Respondent has suffered damages, and damages are presumed for libel per se. The Respondent has suffered damages as a direct and proximate result of the Petitioner's and the Third-Party Defendant's publication, conduct, and continued persistence in these false, defamatory accusations. These damages include but are not limited to: loss of personal and professional reputation, embarrassment, and mental suffering and emotional distress.

64. The Respondent seeks actual damages (in excess of $5,000.00) joint and several against the Petitioner and the Third-Party Defendant, and seeks punitive damages against the Petitioner and the Third-Party Defendant for their willful, wanton, and reckless conduct.

FOR A FIFTH CAUSE OF ACTION AGAINST THE PETITIONER AND AGAINST THE THIRD-PARTY DEFENDANTS

(Additional Defamation Claim)

65. Respondent Robert Bryan Harwell realleges the allegations set forth above against the Petitioner and the Third-Party Defendants.

66. Respondent asserts this claim individually.

67. On or about April 28, 2016, the Petitioner and the Third-Party Defendants restated in an "Amended Petition" that was filed, upon information and belief, in the Probate Court the same defamatory allegations set forth above.

68. The Respondent realleges and incorporates the same allegations set forth in his Fourth Cause of Action set forth above as to this Additional Defamation claim.

69. The Respondent seeks actual damages (in excess of $5,000.00) joint and several against the Petitioner and the Third-Party Defendants, and seeks punitive damages against the Petitioner and the Third-Party Defendants for their willful, wanton, and reckless conduct.

COUNTERCLAIM AGAINST THE PETITIONER

(Outrage)

70. The Respondent Robert Bryan Harwell realleges the allegations set forth above against the Petitioner.

71. The Respondent incorporates and makes a part hereof the Rule to Show Cause for Contempt and the Complaint for Contempt filed in the Horry County Family Court in *David W. Harwell v. Deborah B. Harwell*, Horry County Family Court Docket No. 2015-DR-26-691. **[*See* Exhibit 4 attached to the Answer and Counterclaim filed in response to the original Petition]**

72. The Respondent individually asserts the claim.

73. The Petitioner, through her conduct as set forth in the Complaint for Contempt family court pleading, intentionally or recklessly has inflicted severe emotional distress or was certain or substantially certain that such distress would result from her conduct.

74. The Petitioner's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

75. The Petitioner's actions caused the Respondent severe emotional distress.

76. The emotional distress suffered by the Respondent was so severe that no reasonable person could be expected to endure it.

77. As a direct and proximate result, the Respondent has suffered actual damages in excess of $5,000.00.

78. The Respondent believes he is entitled to punitive damages for such willful, reckless, and wanton conduct.

CLAIM AGAINST THE THIRD-PARTY DEFENDANTS

(Outrage)

79. The Respondent Robert Bryan Harwell realleges the allegations set forth above against the Third-Party Defendants. The Respondent individually asserts this claim.

80. The Third-Party Defendants have knowingly and willfully assisted in the violation of a lawful family court order by filing summons and petitions asserting creditor claims on behalf of Deborah Harwell with full knowledge of the existence of a lawful family court order specifically prohibiting such claims.

81. The Third-Party Defendants have, upon information and belief, filed a third summons and petition attempting to change Deborah Harwell's status for purposes of the South Carolina Probate Code and laws in direct violation of a lawful family court order prohibiting such. Upon information and belief, the Petitioner is not a "surviving spouse" under the South Carolina Probate Code due to the final family court order referenced earlier in this pleading.

82. The Third-Party Defendants have persisted in false and defamatory allegations of criminal conduct against the Respondent, notwithstanding having been presented documentation as previously set forth above.

83. The Third-Party Defendants through their conduct described above have intentionally or recklessly inflicted severe emotional distress or were certain or substantially certain that such distress would result from their conduct.

84. The Third-Party Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

85. The Third-Party Defendants' actions caused the Respondent severe emotional distress.

86. The emotional distress suffered by the Respondent was so severe that no reasonable person could be expected to endure it.

87. As a direct and proximate result, the Respondent has suffered actual damages in excess of $5,000.00.

88. The Respondent believes he is entitled to punitive damages for such willful, reckless, and wanton conduct.

AS A FURTHER CLAIM AGAINST PETITIONER AND THIRD-PARTY DEFENDANTS

(Award of Attorney's Fees and Costs)

84. S.C. Code Section 62-1-111 provides that the Court may award costs and expenses, including reasonable attorney's fees, to any party by another party or from the estate that is the subject of the controversy as justice and equity may require.

85. Respondents request that the Court award attorney's fees and costs to them.

WHEREFORE, the Respondents, having set forth their answers and counterclaims and third-party claims to the Petitioner's Amended Petition, seek the following relief:

(1) Dismissal with prejudice of all of the Petitioner's claims;

(2) Full sanctions and relief provided for under the South Carolina Frivolous Civil Proceedings Sanctions Act against the Third-Party Defendants and the Petitioner;

(3) On behalf of the Estate, an award of actual damages joint and several against the Petitioner and the Third-Party Defendants, and punitive damages on each counterclaim and claim against the Petitioner and the Third-Party Defendants, along with costs and attorney's fees;

(4) For an award of attorney's fees and costs pursuant to S.C. Code Section 62-1-111.

(5) On behalf of Robert Bryan Harwell individually, an award of actual damages joint and several against the Petitioner and the Third-Party Defendants, and punitive damages on each counterclaim and claim against the Petitioner and the Third-Party Defendants, along with costs and attorney's fees; and

(6) A jury trial on each of the Respondent's counterclaims or claims, to the extent permitted by law.

Kevin M. Barth by GPE

Kevin M. Barth
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Florence, South Carolina 29503
(843) 662-6301

Gena Phillips Ervin

Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
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(843) 667-6613

Attorneys for the Respondent

Florence, South Carolina

May 16 2016

STATE OF SOUTH CAROLINA,	)	IN THE PROBATE COURT
COUNTY OF FLORENCE	)	
Deborah B Harwell Petitioner,	)	SUMMONS
vs.	)	CASE NO. 2015-ES-21-00778
Bryan R Harwell, PR of Estate of David W Harwell Respondent(s).	)	

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Myrtle, South Carolina

Dated: May 25, 2016

Deborah B Harwell
Petitioner/Attorney for Petitioner

Address: 8552 Rosano Circle, Myrtle Beach, SC 29579

FILED
2016 MAY 26 AM 9:50
JUDGE PROBATE CT
FLORENCE COUNTY, S.C.

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA)
COUNTY OF Florence)

IN THE PROBATE COURT

IN THE MATTER OF:
David W. Harwell
(Decedent)

CASE NUMBER: 2015-ES-21-00778

Deborah B Harwell
Petitioner(s)

vs.

Bryan R. Harwell, PR, Estate of David W. Harwell
Respondent(s)

***PETITION FOR ELECTIVE SHARE**

The undersigned hereby alleges:

1. I married the Decedent on 11/21/2001. (See the attached certified copy of the Marriage License or the certified copy of the Court Order declaring the existence of a Common Law Marriage between the Decedent and me.)

2. I was still married to the Decedent when he/she died on 09/30/2015. I am informed and believe that a Will executed by Decedent on07/22/2015is being probated in this Court.

3. I elect to take my elective share of the Decedent's Estate

4. This election is made within the later of (a) eight (8) months after the date of the Decedent's death, (b) six (6) months after the Informal or Formal Probate of the Decedent's Will, or (c) thirty (30) days after I was served with a a Summons and Petition to set aside an Informal Probate or to modify or vacate an Order for Formal Probate of the Decedent's Will.

Executed this 25 day of May, 2015.

Signature: Deborah B Harwell
Print Name: Deborah B Harwell
Address: 8552 Rosano Circle
Myrtle Beach, SC 29579
Telephone (Work):
(Home):
(Cell): 843-458-3300
Email: adobepalm@aol.com

Attorney:
Address:
Telephone:
Email:

***NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

FORM #404ES (1/2014)
62-2-205

Marriage Certificate

STATE OF SOUTH CAROLINA
COUNTY OF HORRY } PROBATE COURT

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY, that on the 21 day of November, 2001,

at Horry State of South Carolina,

HARWELL, DAVID WALKER of 312 CANAL STREET whose date of birth

was 01/08/1932

and

JOHNSON, DEBORAH BOGGS of 3830 HOBCAW COURT whose date of birth

was 03/25/1950 were united in marriage by HICKS HARWELL SR,

as shown by the records of this court; Marriage License No. 2001 - 148934

Witness my hand and seal of said Court, this 11 day of March, 2016.

Estelle W. Elliott

Administrative Assistant for Horry County, S.C.

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	**TWELFTH JUDICIAL CIRCUIT**
COUNTY OF FLORENCE	)	**CASE NO.: 2015-ES-21-00778**
ESTATE OF DAVID W. HARWELL		In re: (1) Creditor Claim of $3.1 Million dollars concerning the prenuptial agreement (2) Creditor Claim of $1,457.25
Deborah B. Harwell, Petitioner, v. Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell, Respondent, v. Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third-party Defendants.	)	**Petitioner's Reply to Counterclaims**

Petitioner Deborah B. Harwell responds to the counterclaims of Respondent Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell as follows:

For a First Defense
(Qualified General Denial)

1. Each and every allegation which is inconsistent with the allegations made in the Petition herein and which is not admitted or qualified below is denied, and strict proof demanded thereof.

For a Second Defense
(South Carolina Frivolous Civil Proceedings Sanctions Act,
S.C. Code Ann. § 15-36-10 *et seq.*)

2. Paragraph 12 is a cumulative paragraph, and the allegations incorporated therein are denied to the extent they are inconsistent with those made herein or in the Petition.

3. As to Paragraph 13, Petitioner admits that Deirdre W. Edmonds is a licensed attorney practicing at the Law Office of Deirdre W. Edmonds, PA and that Edmonds has represented Petitioner in this action. The remaining allegations are denied and strict proof demanded thereof.

4. The allegations contained in Paragraph 14 are denied.

5. As to Paragraph 15, Petitioner denies that the Family Court Order was a valid and properly-obtained disposition of Petitioner's rights with respect to the marital estate and/or her husband's estate, and Petitioner has properly filed and preserved her claims against this Estate as necessary to protect her rights.

6. Paragraph 16 is denied.

7. Paragraph 17 is denied.

8. Paragraph 18 is denied.

9. As to Paragraphs 19 and 20, Petitioner denies that Respondents are entitled to any of the relief sought. Petitioner would show that S.C. Code Ann. § 15-36-10(c)(1) specifically limits relief under the South Carolina Frivolous Proceedings Sanctions Act to successful parties, after the trial or certain other dispositions of the case. This purported counterclaim is thus not properly before the Court where Petitioner's claims remain pending.

For a Third Defense
(Civil Conspiracy)

10. Paragraph 21 is a cumulative paragraph, and the allegations incorporated therein are denied to the extent they are inconsistent with those made herein or in the Petition.

11. Paragraph 22 is denied.

12. As to Paragraph 23, Petitioner admits the existence of the duties alleged, but denies that such duties were violated by any filing herein.

13. Paragraph 24 is denied and strict proof demanded thereof.

14. As to Paragraph 25, Petitioner denies that Respondents are entitled to the relief sought.

For a Fourth Defense
(Slander of Title)

15. Paragraph 26 is a cumulative paragraph, and the allegations incorporated therein are denied to the extent they are inconsistent with those made herein or in the Petition.

16. Paragraph 27 is denied, and Petitioner would note that Respondent never attempted to seek consent (if required) of Petitioner to any sales.

17. Paragraph 28 is denied, except that Petitioner is without sufficient information on which to form a belief about whether any bona fide offers were had and as to the value of the assets.

18. Paragraph 29 is denied.

19. Paragraph 30 is denied, and Petitioner would show that, to the extent any such expenses have been incurred which could in any way be attributed to the pendency of the

claims, Respondent has failed to take any action to mitigate the effects on the estate of this regular administrative procedure.

20. Paragraph 31 is denied.

21. Paragraph 32 is denied.

22. Paragraph 33 is denied.

23. As to Paragraph 34, Petitioner denies that Respondent is entitled to damages on any counterclaim herein.

24. Paragraph 35 is denied and strict proof demanded thereof.

For a Fifth Defense
(Abuse of Process)

25. Paragraph 36 is a cumulative paragraph, and the allegations incorporated therein are denied to the extent they are inconsistent with those made herein or in the Petition.

26. Paragraph 37 is denied, and Petitioner would show that she seeks exactly the relief sought in the Petition.

27. Paragraph 38 is denied.

28. Paragraph 39 is denied, and Petitioner would show that, were one seeking evidence of a desire for "some sort of revenge or vendetta," one need look only as far as the abusive and voluminous filings against Petitioner (and now her former attorney) in this Court and the Horry County Family Court.

29. Paragraph 40 is denied and strict proof demanded thereof.

30. Paragraph 41 is denied.

31. As to Paragraph 42, Petitioner denies that Respondents are entitled to any of the relief sought.

Prayer

WHEREFORE, Petitioner prays that the Court issue its Order as follows:

1. Granting her the relief requested in her Petition herein;
2. Dismissing the Respondents' counterclaims;
3. Awarding her the attorneys' fees and costs incurred herein; and
4. Granting such other relief as the Court shall deem fit and proper.

Respectfully submitted,

June 6, 2016

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Moses & Brackett, PC
PO Box 100261
1333 Main Street, Suite 260
Columbia, South Carolina 29202
(803) 461-2328
asilvernail@mkb-law.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 6, 2016, he served a copy of the foregoing document on counsel for the Respondent and Third-party Defendant by depositing a copy of same in the U.S. Mail, first-class postage prepaid, addressed as follows:

Kevin M. Barth, Esquire
Barth, Ballenger & Lewis, LLP
PO Box 107
Florence, SC 29503

Gena Phillips Ervin, Esquire
Orr, Elmore & Ervin, LLC
PO Box 2527
Florence, SC 29503

M. Dawes Cooke, Jr., Esquire
PO Box H
Charleston, SC 29402

Adam T. Silvernail

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE,	)	TWELFTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
v.	)	**THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS' NOTICE OF MOTION AND MOTION TO DISMISS**
Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
Respondents,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,	)	
Third-Party Defendants.	)	

FILED
2016 JUL -5 PM 2:52
CONNIE REED-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

TO: KEVIN M. BARTH, ESQUIRE AND GENA PHILLIPS ERVIN, ESQUIRE, ATTORNEYS FOR RESPONDENT:

PLEASE TAKE NOTICE that the undersigned attorneys for Third-Party Defendants Law Office of Deirdre W. Edmonds and Deirdre W. Edmonds, will move before the presiding judge of the Twelfth Judicial Circuit at the Florence County Courthouse, Florence, South Carolina, or at such other office as the Court may direct, after ten (10) days from the date of service hereof or

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FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE,	)	TWELFTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
v.	)	**THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS' NOTICE OF MOTION AND MOTION TO DISMISS**
Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
Respondents,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,	)	
Third-Party Defendants.	)	

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2016 JUL -5 PM 2:52
CONNIE REED-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

TO: KEVIN M. BARTH, ESQUIRE AND GENA PHILLIPS ERVIN, ESQUIRE, ATTORNEYS FOR RESPONDENT:

PLEASE TAKE NOTICE that the undersigned attorneys for Third-Party Defendants Law Office of Deirdre W. Edmonds and Deirdre W. Edmonds, will move before the presiding judge of the Twelfth Judicial Circuit at the Florence County Courthouse, Florence, South Carolina or at such other office as the Court may direct, after ten (10) days from the date of service hereof or

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FLORENCE COUNTY, S.C.

at such time and place as the Court may direct, for an Order pursuant to SCRCP Rules 12(b)(1), 12(b)(3) and 12(b)(6), dismissing the Third Party Claims of Respondent Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell. The Motion is based on the following grounds:

1. That this Court lacks subject matter jurisdiction over the Third Party Claims because this action was removed from the Probate Court, which lacked subject matter jurisdiction over the Third Party Claims and therefore lacked jurisdiction to remove those claims to Circuit Court;
2. That venue is improper in Florence County; and
3. That the Respondent's claims fail to set forth sufficient facts to constitute any claim for relief against these Third-Party Defendants in that the Third Party Claims do not allege a recognized legal duty owed to the Third-Party Defendants and instead alleges that all times Third-Party Defendants were acting in their capacity as attorney for the Plaintiff.

This Motion will be supported by the pleadings, a Memorandum which may be submitted to the court, and accompanying South Carolina case law.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC
By: Barbara J. Wagner
M. Dawes Cooke, Jr.
Barbara J. Wagner
P.O. Drawer H
Charleston, SC 29402
288 Meeting Street, Suite 200
(843) 577-7700
Counsel for the Third-Party Defendants Law Office of Deirdre W. Edmonds, PA and Deidre W. Edmonds

July 1, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE FLORENCE COUNTY CIRCUIT COURT
COUNTY OF PICKENS	)	C/A No.: 2016-CP-21-1435
Deborah B. Harwell Petitioner,	)	
v.	)	**THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS' MEMORANDUM IN OPPOSITION TO MOTION FOR SANCTIONS**
Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell Respondent,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third Party Defendants.	)	

FILED
2016 JUL 19 PM 12: 30
CONNIE REILY SPEARMAN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Respondent has requested sanctions pursuant to Rule 11, SCRCP, as well as filed claims under the South Carolina Frivolous Civil Proceedings Act, S.C. Code § 15-36-10, *et seq.* In response, along with this Memorandum, Third-Party Defendants Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (hereinafter collectively "Defendants" or "Ms. Edmonds"), incorporate by reference their Motion to Dismiss and Memorandum in Support of Motion to Dismiss, filed simultaneously with this Court.

As an initial matter, Ms. Edmonds respectfully submits that it is premature for the Court to require her to respond to a motion for sanctions. The Court has not yet ruled on either her Motion to Dismiss the Third-Party Claims or Respondent's Motions to Dismiss Ms. Harwell's claims. To require Ms. Edmonds to defend herself, and potentially to reveal her mental impressions and attorney work product, while the underlying claims are still pending would be

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Connie Reily Spearman
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

unfairly prejudicial to her and to Ms. Harwell and improper under Rule 11 and the Frivolous Civil Proceedings Sanctions Act.

The Defendants oppose the Respondent's motion for sanctions against them. They are well aware of the high esteem in which the Harwell family is rightly held in South Carolina, including both the late Justice Harwell and the Respondent Judge Harwell. Yet, an attorney has a duty to take on clients, including in unpopular causes. The South Carolina Supreme Court Attorney's Oath states, in part: "I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice." See also Rule 1.3, SCRPC, "Diligence" Comment 1 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf...."); Rule 1.2, "Scope of Representation and Allocation of Authority Between Client and Lawyer", SCRPC, Comment 5 ("Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities."). Defendant has represented Petitioner Deborah B. Harwell to the best of her ability and for good cause, within the bounds of her duties of professional responsibility. That her client's cause may be viewed as unpopular did not deprive her of her right to legal representation or relieve Defendant of her obligation to provide zealous representation.

Rule 11(a) of the South Carolina Rules of Civil Procedure requires every pleading to be signed with the signature constituting a certificate by the signor that he has read the pleading and

"that to best of his knowledge, information and belief there is good ground to support it". Similarly, the South Carolina Frivolous Civil Proceedings Sanctions Act provides an attorney's signature on a pleading constitutes a certificate to the court "a reasonable attorney in the same circumstances would believe that under the facts his claim . . . may be warranted under the existing law". S.C. Code Ann. § 15-36-10(A)(3)(b). "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law." Rule 3.1, SCRPC.

Defendant has acted at all time in good faith, as any reasonable attorney would under the circumstances - she has pursued claims on behalf of her client with the good faith belief that there are grounds to support those claims. Defendant sets forth in the attached Affidavit her actions related to these issues, which is incorporated herein by reference. (**Exhibit 1**). Defendant has done nothing to warrant sanctions. See e.g. Father v. S. Carolina Dep't of Soc. Servs., 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001)(Rule 11 sanctions were not warranted against Department of Social Services, even though court determined its case against father for alleged abuse of his two sons was unfounded, since DSS decision to investigate alleged abuse was not unreasonable or improperly motivated.).

It is notable that the very basis for Respondent's request for sanctions for filing Ms. Harwell's petition for adjudication as surviving spouse and request for amendment of death certificate is that he says that he correctly reported Ms. Harwell as the surviving spouse. This demonstrates that he has *no basis whatsoever* to oppose her petition, yet he steadfastly continues to do so. Respondent, as evidenced in the Family Court transcript from May 19, 2016 (**Exhibit**

2) and Sandy Dowling's Affidavit (**Exhibit 1, attachment C**), avers that he did in fact name Petitioner, Deborah (Boggs) Harwell, as the surviving spouse of David W. Harwell.

> Q: In pertaining to the death certificate that is in this paper that you filed; did you ask for the death certificate to be altered?
>
> A: No, ma'am. Let me tell you [Ms. Harwell], I signed a form, a DHEC worksheet for that gave your name – it gave your name and it said, I think Deborah Boggs, and it also said married but separated. The form – and I gave that to the funeral home....

Transcr. Hearing 119:6-12 (May 19, 2016), Family Ct., Horry Co. Respondent thus admits that Mrs. Harwell is the surviving spouse, yet he not only inexplicably continues to oppose her petition but he seeks sanctions for filing it. Not only did Defendants reasonably believe that Ms. Harwell was entitled to the relief she seeks, but she is in fact entitled to that relief and there is no reasonable basis for Respondent to continue to oppose it.

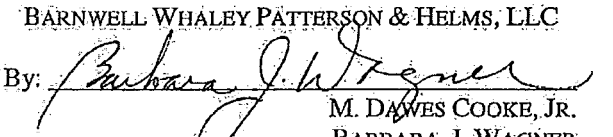
Defendants also acted reasonably in filing Ms. Harwell's creditor claim against the Estate. Time was of the essence for Ms. Harwell to file this claim when she came to the Defendants for help. Defendant was informed of disallowance of these claims shortly before the thirty-day statutory limitation for filing an appeal with the Probate Court (Petition) ran. It was imperative that the filings be done before the thirty days ran, or the claims would permanently expire. See R. 1.3 "Diligence", SCRPC, Comment 3 ("Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness...."). Defendants acted quickly to ensure her client's interests were protected and made the filings with the Probate Court. Respondent's request for sanctions on this matter should be denied even if Ms. Harwell's

claims are ultimately rejected, because Defendants had to act without delay in order to protect her client's interests. Defendant had a good faith belief from the information provided by her client that it was appropriate, and critical, these filings be made with the Probate Court.

For the foregoing reasons, the Defendants respectfully ask that the Court deny Petitioner's motion for sanctions against her.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 

M. DAWES COOKE, JR.
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Charleston, SC 29402
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Email: mdc@barnwell-whaley.com
bwagner@barnwell-whaley.com

ATTORNEYS FOR THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS

Charleston, South Carolina
July 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to counsel of record via USPS this 18th day of July, 2016 as follows:

Deirdre W. Edmonds, Esquire
Law Office of Deirdre W. Edmonds, PA
1500 Highway 17 N, The Courtyard
Suite 213
P.O. Box 16064
Surfside Beach, SC 29587
dedmonds@dedmondslaw.com

Kevin M. Barth, Esquire
Ballenger, Barth, Hoefer
and Lewis, L.L.P.
P.O. Box 107
Florence, SC 29503
kbarth@hbbh.net
Attorney for Respondents

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Orr Elmore & Ervin, LLC
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gpe@orrfirm.com
Attorney for Respondents

Adam T. Silvernail, Esquire
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202-3261
asilvernail@mkb-law.com

John Harleston, SC Bar #2698
Rachel Erwin, SC Bar #064152
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, SC 29201
harlesj@dhec.sc.gov
Attorneys for Respondent DHEC

FILED
2016 JUL 19 PM 12: 30
CONNIE REEL CLERK OF COURT
FLORENCE COUNTY

Cheryl Lisgard
Legal Assistant
Barnwell Whaley Patterson & Helms, LLC

CERTIFIED: A TRUE COPY
Connie Reel Stevens
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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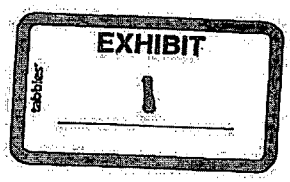
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
v.	)	**AFFIDAVIT OF THIRD-PARTY DEFENDANT DEIRDRE W. EDMONDS**
Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
Respondents,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED before me, Deirdre W. Edmonds, Esquire, who first being duly sworn deposes and says as follows:

1. I am a licensed attorney in the State of South Carolina and the principal of Law Office of Deirdre W. Edmonds, P.A., with a single office located at 1500 Highway 17 North, The Courtyard Suite 213, Surfside Beach, South Carolina 29578.

2. On or around February 8, 2016, Deborah B. Harwell provided me with a copy of David W. Harwell's Death Certification ("Death Certificate") that she had obtained from the



Florence County Probate Court, which Death Certificate had been filed with the Court on October 15, 2015. **(Attachment A)**

3. The Death Certificate for David W. Harwell (the "Decedent") indicated that the Decedent was "Married, But Separated" and in the space provided on the Death Certificate for inclusion of the surviving spouse's name, Deborah B. Harwell's name was not included and instead "NA" was listed. The Death Certificate listed Robert Bryan Harwell as the "Informant" who provided the information for the Death Certificate.

4. Deborah B. Harwell and David W. Harwell were married at the time of the Decedent's death. As a result of Deborah B. Harwell not being listed on the Death Certificate as the Decedent's surviving spouse, Deborah B. Harwell was unable to proceed with arranging certain death benefits due her.

5. I then contacted the South Carolina Department of Health and Environmental Control (DHEC) Vital Records Division, and spoke with Angie Saleeby, Director of Vital Records Division. I discussed with Ms. Saleeby the process of amending the death certificate to correct the patent error not listing Deborah B. Harwell as the surviving spouse. I was told that unless the "informant" on the Death Certificate was willing to submit an affidavit (and evidence of the marriage) to correct the Death Certificate to have the surviving spouse's named added to the Death Certificate, the only way to have the spouse's name added was through a court order. I advised Ms. Saleeby that the Informant on the Death Certificate knew the Decedent was survived by a spouse and knew the identity of the surviving spouse; however, I was still told that a court order would be necessary to correct or amend the Death Certificate if an affidavit from the Informant could not be obtained. I was also told by Angie Saleeby that the funeral home should

not have filed the death certificate with DHEC knowing that the surviving spouse's name was not included on the Death Certificate.

6. The Death Certificate issued by the Division of Vital Records, SC Department of Health and Environmental Control for David W. Harwell states *"This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control. Catherine E. Heigle, Director and State Registrar."*

7. Based upon the Decedent's Death Certificate issued by the Division of Vital Records and the certification on same, the facts certified as being on file by the Division of Vital Records are that (i) the decedent's marital status is "married but separated," (ii) the surviving spouse's name is "NA", and (iii) the informant's name is "Bryan Harwell."

8. Additional information provided to me in February 2016 by Deborah B. Harwell included a clocked copy of the sworn Application for Probate and Appointment filed with the Florence County Probate Court on October 12, 2015 by R. Bryan Harwell. A review of the clocked copy of the verified Application filed by R. Bryan Harwell reveals that initially the surviving spouse's name was inserted under Item 4(b) on page two of the Application but was later whited out. **(Attachment B)**

9. Based upon my knowledge and training as the former Probate Judge for Horry County for twelve years, it is generally accepted protocol to include all heirs not devisees under a decedent's Last Will in the Application under Item 4(b) and, if there are particular facts that bear on the heir's inheritance rights, a notation as to the particular facts would be included in Item 4(b). Such a notation was included on R. Bryan Harwell's verified Application but the surviving spouse's name was whited out nevertheless as if she did not even exist at all.

10. On March 1, 2016, I filed a Petition on behalf of Petitioner Deborah B. Harwell with the Probate Court in Florence County for adjudication of Deborah B. Harwell as the Decedent's surviving spouse and for amendment of the Decedent's Death Certificate to include Deborah B. Harwell as the Decedent's surviving spouse on said Death Certificate.

11. On March 11, 2016, I was contacted by Kevin Barth, counsel for Respondent Robert Bryan Harwell, who provided an affidavit of the funeral home associate director, Sandy Dowling, along with an attached computer form entitled "South Carolina Department of Health and Environmental Control Certificate of Death" purported to have been completed and submitted by Sandy Dowling to DHEC through DHEC's computerized system. Sandy Dowling stated in his Affidavit that "the form that was completed and submitted by me named the surviving spouse as 'Deborah Boggs'." **(Attachment C)**

12. On March 14, 2016, Kevin Barth provided me with a second form entitled "South Carolina Certificate of Death Worksheet" purported to have been prepared by the funeral home based upon the information provided to the funeral home by R. Bryan Harwell. The South Carolina Certificate of Death Worksheet includes the surviving spouse's name as "Deborah Boggs." **(Attachment D)**

13. At this point, I contacted Ms. Saleeby at DHEC again, and was told that the information they received from the funeral home did not list anyone as the surviving spouse. I then shared with Ms. Saleeby the documents that I had been provided from the funeral home. Ms. Saleeby then advised me that the information I had been provided from the funeral home did not reflect what the funeral home had submitted to DHEC through their computerized death certificate system. Later, Ms. Saleeby confirmed with me that their computerized system

automatically enters "NA" in the surviving spouse field on the death certificate if that field is left blank.

14. I subpoenaed the DHEC records on March 14, 2016 and received two (2) forms, one of which was a computer generated form entitled "South Carolina Department of Health and Environmental Control Certificate of Death." I was subsequently advised by Angie Saleeby that this form included all of the information keyed into DHEC's computerized system by the funeral home. This form shows a blank in the surviving spouse field. **(Attachment E)**. The second form provided by DHEC is a form entitled "Death Certification", which includes "NA" in the field provided for the surviving spouse's name and is the same form filed in the Probate Court. **(Attachment F)**

15. Shortly thereafter, I subpoenaed the records of physician, Dr. Naso, who had completed the medical certification information on the "South Carolina Department of Health and Environmental Control Certificate of Death" form. Based upon information and belief, it is my understanding that that form had been delivered to the physician's office by the funeral home after the funeral home completed their portion of the form. The form I received from Dr. Naso **(Attachment G)** also shows a blank in the surviving spouse field and does not match the form purported to have been submitted by the funeral home to DHEC. **(Attachment C)**

16. The form I received from DHEC **(Attachment E)** and the form I received from Dr. Naso **(Attachment G)** are the same but they both differ from the form submitted with the Affidavit of Sandy Dowling, the funeral home director **(Attachment C)**. The form from DHEC and Dr. Naso both have blanks in the surviving spouse field, while the form submitted by Affidavit from Sandy Dowling has "Deborah Boggs" listed in the surviving spouse field.

17. Kevin Barth offered to have his client, R. Bryan Harwell, sign a consent to amend the death certificate to name Deborah (Boggs) Harwell as the decedent's surviving spouse, but only if Petitioner Deborah B. Harwell agreed to dismiss certain other claims, with prejudice. Petitioner declined to accept that offer.

18. To this day, David W. Harwell's death certificate still lists "NA" as the surviving spouse and I am aware of no efforts on the part of R. Bryan Harwell, the Informant and Personal Representative of the Estate of David W. Harwell, to correct this obvious error and omission on the Decedent's Death Certificate. **(Attachment A)**

19. On or around February 8th, 2016, Deborah B. Harwell contacted me and told me she had filed certain claims against the Estate of David W. Harwell, her deceased husband, and she provided me with copies of her filed claims. Thereafter, she mentioned to me during a telephone conversation that she had received some correspondence and documents from R. Bryan Harwell's probate attorney, Gina Ervin, related to the claims and them being disallowed.

20. In order to preserve a claim that had been disallowed by a personal representative, a petition or other formal proceeding must be commenced by a creditor within thirty (30) days of the mailing of a notice of the disallowance or the disallowed claim is barred under the South Carolina Probate Code. I advised Mrs. Harwell of this and urged her to send me the letter and documents from Ms. Ervin at her earliest convenience.

21. Mrs. Harwell sent the correspondence and documents to me and I received them on or about March 3, 2016 and, based upon my review of same, determined that the filing deadline was March 12, 2016. Due to the exigency of filing a petition with regards to the Personal Representative's disallowances of Mrs. Harwell's claims or the claims being forever

barred, I had filed two (2) separate Petitions for allowance of creditor claims on Mrs. Harwell's behalf on March 9, 2016.

FURTHER AFFIANT SAYETH NOT.

Deirdre W. Edmonds

SWORN TO before me this
15 day of July 2016.

Notary Public for South Carolina
My commission Expires: July 8, 2025

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 159-15-034681
DECEDENT'S NAME: DAVID WALKER HARWELL
SEX: MALE
AKA's: NA
SOCIAL SECURITY NUMBER: 250-36-2469
ARMED FORCES: YES
DATE OF BIRTH: JANUARY 08, 1932
AGE: 83 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT
COUNTY OF DEATH: FLORENCE
NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC. FLORENCE, SC 29506
PLACE OF DISPOSITION: MOUNT HOPE CEMETERY
DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2208 TIMBERLANE DRIVE, FLORENCE, FLORENCE COUNTY, SC, 29506
PLACE OF BIRTH: SOUTH CAROLINA
MARITAL STATUS: MARRIED BUT SEPARATED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: BAXTER HICKS HARWELL SR.
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LACY RANKIN
INFORMANT'S NAME: BRYAN HARWELL
RELATIONSHIP: SON
MAILING ADDRESS: 1389 LAZAR PLACE, FLORENCE, SC, 29501
FUNERAL HOME: STOUDENMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC. 29505
FUNERAL DIRECTOR: JOHN F. DOWLING
LICENSE NUMBER: 1283
EMBALMER'S NAME: DANIEL BENTON
LICENSE NUMBER: 3559
ACTUAL OR PRESUMED DATE OF DEATH: SEPTEMBER 30, 2015
MANNER OF DEATH: NATURAL
ACTUAL OR PRESUMED TIME OF DEATH: 1305
CAUSE OF DEATH - PART I
ANOXIC BRAIN INJURY
VENTRICULAR ARRHYTHMIA
ISCHEMIC CARDIOMYOPATHY
CORONARY ARTERY DISEASE
OTHER SIGNIFICANT CONDITIONS - PART II:
NA
CORONER CONTACTED? NO
AUTOPSY PERFORMED? NO
AUTOPSY AVAILABLE? NA
DATE OF INJURY: NA
TIME OF INJURY: NA
INJURY AT WORK? NA
PLACE OF INJURY: NA
LOCATION OF INJURY: NA
HOW THE INJURY OCCURRED?
NA
CERTIFIER NAME AND TITLE: DR. NICOLETTE NASO
LICENSE NUMBER: 15707
CERTIFIER'S ADDRESS: NA
DATE FILED: OCTOBER 13, 2015
DATE OF ISSUANCE: OCTOBER 14, 2015
SPECIAL INSTRUCTIONS?
NA

SC04641899

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

This is watermarked paper; do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC
Protecting Health and Environment
South Carolina Department of Health and Environmental Control

Attachment A

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE MATTER OF: David W. Harwell
(Decedent)

THE PROBATE COURT

CASE NUMBER: 2015-ES-21-00778

FILED
2015 OCT 12 PM 4:39

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

Petitioner(s)
vs.
Respondent(s)

APPLICATION FOR INFORMAL (check any that apply)
- ☑ PROBATE OF WILL
- ☑ APPOINTMENT

*PETITION FOR FORMAL
- ☐ TESTACY
- ☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. N/A

2. Decedent Information:

Full Legal Name (including all known names): David W. Harwell
Date of Birth: 1-8-1932
Date of Death: 9-30-2015
Age at date of death: 83

3. Venue for this proceeding is proper in this County because:

- ☑ Decedent was domiciled in this County at date of death: Address: _____; County: _____; State: South Carolina 2208 Timberlane Dr., Florence, SC
- ☐ Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death: Address: _____; County _____; State: South Carolina
- ☐ Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
R. Bryan Harwell		1389 Cazar Place, Florence, SC	son
William Baxter Harwell		1191 Carnoustie Ct, Myrtle Bch, SC	son

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
(See mediation/separation agreement filed 7-21-15) Family Court Order		Case # 2015-DR-26-691	Horry County

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of $ TBD and/or probate real estate having an approximate value of $ TBD. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

☒ The original is attached.
☒ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: 7-22-15
Codicil(s): ____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

_____

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- [x] named as Primary Personal Representative in Will
- [ ] named as Alternate Personal Representative in Will
- [ ] nominee of above Primary Personal Representative in Will
- [ ] nominee of above Alternate Personal Representative in Will
- [ ] surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- [ ] other devisee of Decedent (describe): _____ or nominee of said devisee
- [ ] surviving spouse of Decedent or nominee of said spouse
- [ ] other heir of Decedent (describe): _____ or nominee of said heir
- [ ] creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- [ ] other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

NONE

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 6th day of Oct 20 15

Sharon C. Davis

Notary Public for South Carolina
My Commission Expires: 6/19/19

Signature of Applicant/Petitioner: R. Bryan Harwell
Print Full Name: Robert Bryan Harwell
Address: 1389 LAZAR PLACE
Florence, SC 29501
Telephone (work) 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan_Harwell@scd.uscourts.gov
Relationship to Decedent/Estate: SON

SWORN to before me this _____ day of _____ 20 _____

Notary Public for South Carolina
My Commission Expires: _____

Signature of Co-Applicant/Co-Petitioner: _____
Print Full Name: _____
Address: _____
Telephone (work) _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

CB

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed 7-22-2015 be informally ☒ GRANTED ☐ DENIED.

Executed this 13th day of OCT, 2015.

J. MUNFORD SCOTT, JR., Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

☐ Fiduciary Bond in the amount of $_____
☐ Bond waived by Will or Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Notice to Creditors
☒ Required
☐ Not Required

Executed this 13th day of OCT, 2015.

J. MUNFORD SCOTT, JR., Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: R. Bryan Harwell
Print Full Name: ROBERT BRYAN HARWELL
Address: 1389 LAZAR PLACE
Florence S.C. 29501
Telephone (Work): 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan_Harwell@scd.uscourts.gov

Signature:
Print Full Name:
Address:

Telephone (Work):
(Home):
(Cell):
Email:

Attorney:
Address:

Telephone:
Email:

STATE OF SOUTH CAROLINA, COUNTY OF FLORENCE Estate of David W. Harwell Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually And as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondent(s).	)	IN THE PROBATE COURT CASE NO. 2015-ES21-00778 AFFIDAVIT OF SANDY DOWLING

Personally appeared before me, Sandy Dowling, who first duly sworn, deposes and says as follows:

1. I am the Associate Director at Stoudenmire Dowling Funeral Home in Florence, South Carolina, and in that capacity handled the funeral arrangement for and the funeral of Honorable David W. Harwell.

2. As part of my duties, I am required to fill out a computer form provided to us by State of South Carolina Department of Health and Environmental Control, known as an Abstract Certificate of Death. From the information entered by me, DHEC issues the Certified Certificate of Death.

3. Attached to this Affidavit is the form I completed in conjunction with the death of Judge Harwell. The information was given to me by his son, R. Bryan Harwell.

4. The form that was completed and submitted by me named the surviving spouse as "Deborah Boggs", in accordance with our general procedures.

5. I, as the author of this document, have nothing to do with the actual completion of the Certified Certificate of Death and the issuance of same. That task is accomplished by an employee at DHEC.

Attachment C

FURTHER DEPONENT SAITH NOT!

Sandy Dowling

SWORN TO before me
This 10th day of March, 2016

Notary Public for S.C.
Commission Expires: 2-12-23

C-2

State Birth Number

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State File Number
15 034083

NAME OF DECEDENT David Walker Harwell
For use by physician or institution

Items 1-23c To Be Completed/Verified By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-36-2469
4a. AGE-Last Birthday (Years): 83
4b. UNDER 1 YEAR: Months / Days
4c. UNDER 1 DAY: Hours / Minutes
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1932
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOS, SC
7a. RESIDENCE-STATE: South Carolina
7b. COUNTY: Florence
7c. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.
7f. ZIP CODE: 29506
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN US ARMED FORCES? ☒ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage): Deborah Boggs
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1389 Lazar Place Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions)
IF DEATH OCCURRED IN HOSPITAL: ☒ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/long term care facility ☐ Decedent's home ☐ Other (Specify)
15. FACILITY NAME (If not institution, give street and number): McLeod Regional Medical Center of the Pee Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire - Dowling Funeral Home, Inc.
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT
23. LICENSE NUMBER (Of Licensee): 2402 S. Irby St. Florence, SC 29505
23a. EMBALMER (Signature): Daniel Benton
23b. EMBALMER LICENSE NUMBER: 3559
23c. LICENSE NUMBER (Of Facility): 888

Items 24-29 To Be Completed By: MEDICAL CERTIFIER

ITEMS 24-29 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
24. DATE PRONOUNCED DEAD (MM/DD/YYYY)
25. TIME PRONOUNCED DEAD
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
27. LICENSE NUMBER
28. DATE SIGNED (mm/dd/yyyy)
29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): September 30, 2015
30. ACTUAL OR PRESUMED TIME OF DEATH: 12:58 PM
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)

32. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

		Approximate Interval Onset to death
IMMEDIATE CAUSE (Final disease or condition resulting in death)	a.	
	Due to (or as a consequence of):	
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST	b.	
	Due to (or as a consequence of):	
	c.	
	Due to (or as a consequence of):	
	d.	
	Due to (or as a consequence of):	

PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.
33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☐ Natural ☐ Homicide ☐ Accident ☐ Pending Investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Spell Month)
39. TIME OF INJURY
40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY: State: City or Town: County: Street & Number: Apartment Number: Zip Code:
43. DESCRIBE HOW INJURY OCCURRED:
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)
45. CERTIFIER (Check only one)
☐ Certifying Physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying Physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier:
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)
46a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
47. TITLE OF CERTIFIER
48. LICENSE NUMBER
49. DATE CERTIFIED (MM/DD/YYYY)
50. FOR REGISTRAR ONLY - DATE FILED (MM/DD/YYYY)

Items 51-55 To Be Completed By: Funeral Director

51. DECEDENT'S EDUCATION - Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
52. DECEDENT OF HISPANIC ORIGIN - Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.
☒ No, not Spanish/Hispanic/Latino/Latina
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify)
53. DECEDENT'S RACE - (Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of tribe enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED"): Judge-Lawyer
55. KIND OF BUSINESS/INDUSTRY: Legal

Amendment Code
Amendment Number
Date
User ID
BRTP NO. 202882
DHL C 870 Rev. 2004

C-3

DHEC
PROMOTE PROTECT PROSPER

SOUTH CAROLINA CERTIFICATE OF DEATH WORKSHEET

DATE OF DEATH: (MM/DD/YYYY) 9/30/2015

1. DECEDENT'S LEGAL NAME (Include AKAs, if any) (First, Middle, Last)	2. SEX	3. SOCIAL SECURITY NUMBER
David Walker Harwell	Male	250-36-2469

4a. AGE-Last Birthday (Years)	4b. UNDER 1 YEAR Months	Days	4c. UNDER 1 DAY Hours	Minutes	5. DATE OF BIRTH (MM/DD/YYYY)	6. BIRTHPLACE (City and State or Foreign Country)
83	0	0			1/8/1932	South Carolina

7a. RESIDENCE-STATE	7b. COUNTY	7c. CITY OR TOWN
South Carolina	Florence County	Florence

7d. STREET AND NUMBER	7e. APT. NO.	7f. ZIP CODE	7g. INSIDE CITY LIMITS?
2208 Timberlane Drive		29506	☐ Yes ☑ No

8. EVER IN US ARMED FORCES?	9. MARITAL STATUS AT TIME OF DEATH	10. SURVIVING SPOUSE'S NAME (If w/o, give name prior to first marriage)
☑ Yes ☐ No	☐ Married ☑ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown	Deborah Boggs

11. FATHER'S NAME (First, Middle, Last)	12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)
Baxter Hicks Harwell Sr.	Lacy Rankin

13a. INFORMANT'S NAME	13b. RELATIONSHIP TO DECEDENT	13c. MAILING ADDRESS (Street and Number, City, State, Zip Code)
Bryan Harwell	Son	1389 Lazar Place, Florence, South Carolina 29501

14. PLACE OF DEATH (Check only one; see instructions)

IF DEATH OCCURRED IN A HOSPITAL: ☑ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival

IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)

15. FACILITY NAME (If not institution, give street and number)	16. CITY OR TOWN, STATE AND ZIP CODE	17. COUNTY OF DEATH
McLeod Regional Medical Center	Florence, South Carolina 29506	Florence

18. METHOD OF DISPOSITION: ☑ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)

19. PLACE OF DISPOSITION (Name of cemetery, crematory, other place): Mount Hope Cemetery

20. LOCATION-CITY, TOWN, AND STATE: Florence, South Carolina

21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire-Dowling Funeral Home

22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT

23. LICENSE NUMBER (Of Licensee): 3783

2402 South Irby Street, Florence, South Carolina 29505

23a. EMBALMER (Signature)

23b. EMBALMER LICENSE NUMBER

23c. LICENSE NUMBER (Of Facility): 888

61. DECEDENT'S EDUCATION-Check the box that best describes the highest degree or level of school completed at the time of death.

- ☐ 8th grade or less
- ☐ 9th-12th grade; no diploma
- ☐ High school graduate or GED completed
- ☐ Some college credit, but no degree
- ☐ Associate degree (e.g., AA, AS)
- ☐ Bachelor's degree (e.g., BA, AB, BS)
- ☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
- ☑ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)

62. DECEDENT OF HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.

- ☑ No, not Spanish/Hispanic/Latino/Latina
- ☐ Yes, Mexican, Mexican American, Chicano/Chicana
- ☐ Yes, Puerto Rican
- ☐ Yes, Cuban
- ☐ Yes, other Spanish/Hispanic/Latino/Latina

(Specify)

63. DECEDENT'S RACE. (Check one or more races to indicate what the decedent considered himself or herself to be)

- ☑ White
- ☐ Black or African American
- ☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian (Specify)
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander (Specify)
- ☐ Other (Specify)

64. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED.")

Judge/Lawyer

65. KIND OF BUSINESS/INDUSTRY

Legal

The information above was reviewed and found to be correct.

R. Bryan Harwell (Signature of Informant) (Required)

Sept. 30, 2015 (Date)

BRTP NO.

The collection and reporting to DHEC of information contained on the South Carolina Death Certificate are exempt from HIPAA regulations (see 45 CFR §§ 160.203 (a), 164.512 (b) (1). However, state law provides protection against the unauthorized release of confidential information from the death certificate.

DHEC-0870C (07/2010)

Attachment D

STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

This is a true copy of the death certificate containing the physician's original signature on file in the records of the Division of Vital Records, Public Health Statistics and Information Services of the South Carolina Department of Health and Environmental Control. The certificate is issued pursuant to Subpoena, Case # 2015-ES-21-00778 of the Probate Court in Florence County dated March 14, 2016.

ATTEST: Angela P. Salesky, Director

DATE: March 15, 2015

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number | State File Number 15034469

David Walker Harwell | Male | 250-30-3103

03 | 01/08/1932 | Florence County NOS, SC

South Carolina | Florence | Florence

2004 Timberlane Drive | 29506

Decatur Hicks Harwell Sr. | Lucy Rankin

Bryan Harwell | Son | 1229 Lazar Place, Florence, South Carolina 29501

Mid and Regional Medical Center of the Pee Dee, Inc | Florence, South Carolina 29505 | Florence

Mount Hope Cemetery

Florence, South Carolina | Gibbons-Dowling Funeral Home, Inc.

John F. Dowling (Electronically Verified) | 1203 | 2402 S. Irby St, Florence, SC 29505

Daniel Morgan | 29505

September 30, 2015 | 1305

A. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. Do NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without stating the underlying cause on line b.

a. anoxic brain injury — days
b. ventricular arrhythmia — days
c. Ischemic cardiomyopathy — years
d. coronary artery disease — years

Judge-Lawyer

Legal

Nicolas Dobsler MD

Nicolas Dobsler, MD 901 E Cheves St. Ste 600 Florence SC

MD | 16107 | 10-13-2015 | 10-13-2015

SC04963490

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark; Hold to light to verify watermark.

Revision Date: 07/31/2015

ANY ALTERATION OR REPRODUCTION OF THIS CERTIFICATE IS A VIOLATION OF SECTION 16-17-560 OF THE SC CODE OF LAWS

Attachment E

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-15-034683

DECEDENT'S NAME: *DAVID WALKER HARWELL* SEX: MALE
AKA's: NA SOCIAL SECURITY NUMBER: 250-36-2469
ARMED FORCES: YES
DATE OF BIRTH: JANUARY 08, 1932 AGE: 83 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL - INPATIENT COUNTY OF DEATH: FLORENCE
NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC, FLORENCE, SC 29506
PLACE OF DISPOSITION: MOUNT HOPE CEMETERY
DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2208 TIMBERLANE DRIVE, FLORENCE, FLORENCE COUNTY, SC, 29506
PLACE OF BIRTH: SOUTH CAROLINA MARITAL STATUS: MARRIED BUT SEPARATED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: BAXTER HICKS HARWELL SR.
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LACY RANKIN
INFORMANT'S NAME: BRYAN HARWELL RELATIONSHIP: SON
MAILING ADDRESS: 1389 LAZAR PLACE, FLORENCE, SC, 29501
FUNERAL HOME: STOUDENMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC, 29505
FUNERAL DIRECTOR: JOHN F. DOWLING LICENSE NUMBER: 1283
EMBALMER'S NAME: DANIEL BENTON LICENSE NUMBER: 3559
ACTUAL OR PRESUMED DATE OF DEATH : SEPTEMBER 30, 2015 MANNER OF DEATH : NATURAL
ACTUAL OR PRESUMED TIME OF DEATH: 1305
CAUSE OF DEATH - PART I
ANOXIC BRAIN INJURY
VENTRICULAR ARRHYTHMIA
ISCHEMIC CARDIOMYOPATHY
CORONARY ARTERY DISEASE
OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? NO AUTOPSY PERFORMED? NO AUTOPSY AVAILABLE? NA
DATE OF INJURY: NA TIME OF INJURY: NA INJURY AT WORK? NA
PLACE OF INJURY: NA
LOCATION OF INJURY: NA
HOW THE INJURY OCCURRED?
NA

CERTIFIER NAME AND TITLE: NICOLETTE NASO, DR. LICENSE NUMBER: 15707
CERTIFIER'S ADDRESS: NA
DATE FILED: OCTOBER 13, 2015
DATE OF ISSUANCE: MARCH 15, 2016
SPECIAL INSTRUCTIONS :
NA

ATTEST: This is a true copy of the death certificate on file in the Division of Vital Records, Public Health Statistics and Information Services of the South Carolina Department of Health and Environmental Control and is issued pursuant to Subpoena of the South Carolina Probate Court of Florence County, Case No. 2015-ES-21-00778, Dated March 14, 2016.

DATE: March 15, 2016

Lekia Richards
Lekia Richards
Assistant to the Director

SC04963288

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC

Attachment P

e822430

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number
15 034683

NAME OF DECEDENT — David Walker Harwell

For use by physician or institution

Items 1-3c To Be Completed/Verified By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-36-2469
4a. AGE-Last Birthday (Years): 63
4b. UNDER 1 YEAR: Months / Days
4c. UNDER 1 DAY: Hours / Minutes
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1952
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOS, SC
7a. RESIDENCE-STATE: South Carolina
7b. COUNTY: Florence
7c. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.
7f. ZIP CODE: 29500
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN U.S. ARMED FORCES? ☒ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☐ Married ☒ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage)
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S MAIDEN NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1380 Lazar Place Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions): ☒ Hospital ☐ Emergency Room/Outpatient ☐ Dead on Arrival
IF DEATH OCCURRED IN HOSPITAL: ☐ Nursing Home/Long term care facility ☐ Decedent's home ☐ Other (Specify)
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility
15. FACILITY NAME (If not institution, give street and number): McLeod Regional Medical Center of the Pee Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☐ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Gloudamire - Dowling Funeral Home, Inc. 2402 S. Irby St. Florence, SC 29505
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT: John F. Dowling (Electronically Verified)
23. LICENSE NUMBER (Of Licensee): 1263
24. PRINT NAME (Person): Daniel Benton
25. FUNERAL DIRECTOR LICENSE NUMBER: 3559
26. LICENSE NUMBER (Of Facility): 888

Items 27-33 To Be Completed By: MEDICAL CERTIFIER

27a. TIME PRONOUNCED DEAD MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
28. DATE PRONOUNCED DEAD (MM/DD/YYYY)
29. TIME PRONOUNCED DEAD
30. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
31. LICENSE NUMBER
32. DATE SIGNED (MM/DD/YYYY)
33. ACTUAL OR INFERRED DATE OF DEATH (Spell Month): September 30, 2015
34. ACTUAL OR PRESUMED TIME OF DEATH: 1305
35. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)

32. PART 1. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

IMMEDIATE CAUSE (Final disease or condition resulting in death)
a. anoxic brain injury — Due to (or as a consequence of)
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST
b. ventricular dysrhythmia — Due to (or as a consequence of)
c. ischemic cardiomyopathy — Due to (or as a consequence of)
d. coronary artery disease — Due to (or as a consequence of)

Approximate Interval Onset to death: a. days; b. days; c. years; d. years

PART 2. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART 1.

32. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☒ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
38. DATE OF INJURY (Spell Month)
39. TIME OF INJURY
40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY: Street / Apartment Number / City or Town / County / State / Zip Code
43. DESCRIBE HOW INJURY OCCURRED
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)
45. CERTIFIER (Check only one)
☒ Certifying Physician To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronounced and Certifying Physician To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner/Medical Examiner On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier: Nicolette Nasso MD
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32): Nicolette Nasso, MD 1015 Cheves St. McLeod Florence SC 29506
46a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
47. TITLE OF CERTIFIER: MD
48. LICENSE NUMBER: 15707
49. DATE CERTIFIED (MM/DD/YYYY): 10-13-2015
50. FOR REGISTRAR ONLY - DATE FILED (MM/DD/YYYY)

Items 51-65 To Be Completed By: Funeral Director

51. DECEDENT'S EDUCATION - Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
52. DECEDENT OF HISPANIC ORIGIN - Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the "No" box if decedent is not Spanish/Hispanic/Latino.
☒ No, not Spanish/Hispanic/Latino
☐ Yes, Mexican, Mexican American, Chicano
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, other Spanish/Hispanic/Latino (Specify)
53. DECEDENT'S RACE (Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED"): Judge-Lawyer
55. KIND OF BUSINESS/INDUSTRY: Legal

Amendment Code
Amendment Number
Date
Initials
BRTP NO. 202982
DHEC 879 Rev. 2004

Attachment G

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and through his personal representative, Bryan Harwell,	
Plaintiff,	Transcript of Record
vs.	May 19, 2016
Deborah B. Harwell,	
Defendant.	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter

PART 2

EXHIBIT
2

1 witness regarding those issues you need to ask those.
2 Anything he might have done to you, you didn't file a Rule to
3 Show Cause so that's not before me. I've allowed you some
4 latitude but you need to move on.
5 **BY MS. HARWELL:**
6 Q: In pertaining to the death certificate that is in this
7 paper that you filed; did you ask for the death certificate to
8 be altered?
9 A: No, ma'am. Let me tell you, I signed a form, a DHEC
10 worksheet form that gave your name -- it gave your name and it
11 said, I think Deborah Boggs, and it also said married but
12 separated. The form -- and I gave that to the funeral home.
13 I don't deal directly, and I did not deal directly with DHEC.
14 The original form, as I understand it, which Ms. Edmonds has
15 that Mr. Dowling submitted indicated your name and it said
16 married, instead of married but separated. The only change
17 that I know of is that they were changing married to married
18 but separated. I signed the correct information, gave that
19 information to the funeral home with my brother present. They
20 have always known you were married but separated and it's my
21 understanding that was passed on to DHEC.
22 Q: Did you see the death certificate when it came back?
23 A: I did and it said N/A under surviving spouse and I even
24 contacted -- when I got it from the funeral home because the
25 provided it to me. DHEC didn't send it to me. I don't

STATE OF SOUTH CAROLINA	)	IN THE FLORENCE COUNTY CIRCUIT COURT
COUNTY OF PICKENS	)	C/A No.: 2016-CP-21-1435
Deborah B. Harwell Petitioner,	)	
v.	)	
Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell Respondent,	)	**THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually, Third Party Defendants.	)	

FILED
2016 JUL 19 PM 12:30
CORNIE REEL SHEARER
CCCP & GS
FLORENCE COUNTY, S.C.

Third-Party Defendants Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (hereinafter collectively "Defendants" or "Ms. Edmonds"), by and through their undersigned counsel, hereby submit this Memorandum in Support of Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(3) and 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendants' Motion to Dismiss is based on the grounds that Respondent Robert Bryan Harwell's (hereinafter "Respondent") Third Party Complaints/Claims and Amended Third Party Complaints/Claims (hereinafter collectively "Complaint" or "Respondent's Complaint") 1) were brought in a court that lacks subject matter jurisdiction; 2) are brought in an improper venue; and 3) fail to state a claim upon which relief can be granted against these Defendants.

CERTIFIED: A TRUE COPY
Cornie Reel Shearer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE FLORENCE COUNTY CIRCUIT COURT
COUNTY OF PICKENS	)	C/A No.: 2016-CP-21-1435
Deborah B. Harwell Petitioner,	)	
v.	)	
Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell	)	**THIRD-PARTY DEFENDANTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND DEIRDRE W. EDMONDS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**
Respondent,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually,	)	
Third Party Defendants.	)	

FILED
2016 JUL 19 PM 12:23
CLERK OF COURT
C.P. & G.S.
FLORENCE COUNTY

Third-Party Defendants Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (hereinafter collectively "Defendants" or "Ms. Edmonds"), by and through their undersigned counsel, hereby submit this Memorandum in Support of Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(3) and 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendants' Motion to Dismiss is based on the grounds that Respondent Robert Bryan Harwell's (hereinafter "Respondent") Third Party Complaints/Claims and Amended Third Party Complaints/Claims (hereinafter collectively "Complaint" or "Respondent's Complaint") 1) were brought in a court that lacks subject matter jurisdiction; 2) are brought in an improper venue; and 3) fail to state a claim upon which relief can be granted against these Defendants.

CERTIFIED: A TRUE COPY
Connie Beal Stevens
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

BRIEF SUMMARY OF ARGUMENTS

The Court should dismiss the third party action against Defendants, for three reasons: First, the Court lacks subject matter jurisdiction over the third party claims because the Probate Court, from which this case was removed, did not have subject matter jurisdiction over them and therefore could not transfer them; second, venue is improper as to these Defendants because they reside in Horry County and almost everything that they did out of which the claims against them arise occurred in Horry County; and, finally, these Defendants are immune from suit because the claims against them arise out of their representation of Mrs. Harwell, and the Third Party Complaint does not allege the existence of a legally cognizable duty that the Defendants owed to the Respondent.

The Court should dismiss the third party claims due to lack of subject matter jurisdiction. This action was removed from the Probate Court to the Florence County Circuit Court by Order of Probate Judge Kenneth Fulp, dated June 10, 2016 (originally in Florence County Probate Court (2015ES2100778); moved to Beaufort County Probate Court (2016ES0700302)). The Probate Court lacks subject matter jurisdiction, however, over an action against an attorney, Ms. Edmonds, and therefore lacks authority to remove the case to Circuit Court. The Probate Court only had the authority to dismiss the action against the Defendants.

The Court should grant dismissal of this action against Defendants because venue is improper. The overwhelming majority of the alleged acts or omissions concerning both the Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds individually occurred in Horry County. Per South Carolina Codes § 15-7-30(C) and (E), venue is only proper in Horry County, and therefore, these actions pending in Florence County against each Defendant must be dismissed.

The Court should grant dismissal of this action against Defendants because Respondent has failed to satisfy its burden of proof in regards to each of its claims. For the first claim seeking sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act and Rule 11 SCRCP, Defendants are immune from liability. Case law is clear on this point. When an attorney acts on behalf of and with the knowledge of their client, they are immune from liability to third persons. The record is devoid of any evidence indicating Defendants ever acted outside the scope of representation in any of her actions involved with Respondent, or that there is some sort of special duty owed to Respondent. Further, Defendants' immunity extends to each of Respondent's claims. The second claim of civil conspiracy must fail as well for failure to satisfy two of the required elements needed to assert such a claim. It has not been shown Defendants ever sought to injure Respondent in her actions nor has it been shown Respondent has suffered any special damages as a result of the alleged conspiracy. The third claim, slander of title, fails due to Respondent's inability to satisfy elements (2), (3) and (5) for a slander of title claim. It has not been shown Defendants' conduct was malicious, it has not been shown that the statements made by Petitioner and Defendants are false, and it has not been shown Respondent has suffered special damages. The fourth claim of abuse of process fails because Respondent cannot show Defendants had any ulterior or personal motive in assisting her client in filing pleadings in her client's interests. The claims of libel *per se*, libel, defamation *per se*, and defamation fail as well due to inadequate pleading and factual basis to bring them. Respondent's claim of outrage must fail because it has failed to satisfy any of the four requisite elements mandated to bring the claim. Respondent has not demonstrated the required level of intent to harm on the part of Defendants, nor has it offered proof of the alleged emotional harm it has suffered. Because of Respondent's failures to adequately plead any of its claims, they should each be dismissed.

BACKGROUND FACTS

Petitioner, Mrs. Deborah B. Harwell, married David W. Harwell on November 21, 2001. Due to mutual differences the two became separated on February 11, 2015. A mediation was conducted on July 17, 2015. On July 21, 2015, the Honorable James A. Spruill, III approved a Mediated Settlement Agreement dealing with the terms of their separation. David W. Harwell perished on September 30, 2015. The decedent was still married to Petitioner at the time of his death. Respondent Robert Bryan Harwell, son of the decedent, was appointed the personal representative of David W. Harwell's estate.

Respondent Robert Bryan Harwell ("Informant") was responsible for providing information to the funeral home (which is then sent to South Carolina Department of Health and Environmental Control Vital Records Division) necessary to complete David W. Harwell's death certificate. Mrs. Harwell was not listed as the surviving spouse on the death certificate and has therefore been unable to obtain certain death benefits due her. On March 1, 2016, a Petition for Adjudication as Surviving Spouse and Amendment of Death Certificate was filed on her behalf with the Probate Court.

Deborah Harwell filed certain creditor claims against the estate, which were disallowed by the Personal Representative Robert Bryan Harwell. In order to preserve those claims, Third-Party Defendant Deirdre Edmonds filed Petitions for Allowance of Creditor's Claims in Probate Court on March 9, 2016 on behalf of Deborah Harwell.

In response to these Petitions, Respondent filed the instant actions.

LAW & ANALYSIS

I. LACK OF SUBJECT MATTER JURISDICTION

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994)(citing Bank of Babylon v. Quirk, 192 Conn. 447, 472 A.2d 21, 22 (1984)). In Dove, the court, distinguishing between venue and subject matter jurisdiction, stated: "A court sitting where venue is improper may nevertheless render judgment provided the party who possesses the venue right consents, either expressly or impliedly.... A court lacking subject matter jurisdiction, however, has no authority to act regardless of the geographical location or consent of the litigants." Id. (internal citations omitted).

Here, the actions were removed from the Probate Court to the Florence County Circuit Court by Order of Probate Judge Kenneth Fulp. The Probate Court, however, lacked subject matter jurisdiction over these actions against an attorney, Ms. Edmonds, and therefore lacked the authority to do anything, including remove the case to Circuit Court. The Probate Court "had no authority to act", other than to dismiss the action against the Defendant. The Probate Court's subject matter jurisdiction is set forth in S.C. Code Ann. Sec. 62-1-302: "(a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court; . . . ." (emphasis added). The third party

claims against these Defendants do not relate to the estate. They are damages claims against a third party to the estate, arising out of actions that the Defendants took after the estate was already opened. The claims arising out of the Petition for Adjudication as Surviving Spouse and Amendment of Death Certificate have no bearing whatsoever on the estate. Indeed, those appear to be claims that the Respondent is making in his capacity as Informant rather than on behalf of the estate. For these reasons, the third-party claims should have been brought in Circuit Court in the first instance, and the Probate Court lacked power to do anything other than dismiss them.

II. IMPROPER VENUE

"Venue is the place or geographical location of trial." Whaley v. CSX Transp., Inc., 362 S.C. 456, 468, 609 S.E.2d 286, 292 (2005). South Carolina Code § 15-7-30 establishes criteria for proper venue. The two relevant provisions differ solely in whether they apply, on the one hand, to individual persons or, on the other hand to corporations or partnerships.

S.C. Code § 15-7-30(C) provides, in full:

> A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the:
>
> (1) defendant resides at the time the cause of action arose; or
>
> (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

(Emphasis added).

S.C. Code § 15-7-30(E) provides, in full:

> A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the:
>
> (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or

(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

(Emphasis added). The Supreme Court has unanimously explained, "[a] defendant's right to be tried in the county of its residence is a substantial right," and "[t]he question of where a defendant resides is a question of law". Whaley v. CSX Transp., Inc., 362 S.C. 456, 468, 609 S.E.2d 286, 292 (2005). Both Defendant Deirdre W. Edmonds and Defendant Law Office of Deirdre W. Edmonds, P.A. meet both these criteria for venue in Horry County, and therefore these actions against both must be dismissed.

A. THE COURT SHOULD GRANT DISMISSAL TO DEFENDANT DEIRDRE W. EDMONDS PURSUANT TO S.C. CODE § 15-7-30(C)

Defendant Deirdre W. Edmonds satisfies both of S.C. Code § 15-7-30(C)'s criteria for venue in Horry County. Because these actions are pending in Florence County, the Court must dismiss the actions. South Carolina Code § 15-7-30(C) mandates that a civil action "against a resident individual defendant must be brought and tried in the county in which the . . . (1) defendant resides at the time the cause of action arose . . . ." As Defendant Deirdre W. Edmonds attests in her sworn affidavit, **Exhibit A**, she resides, both personally and professionally, in Horry County. The facts establishing her residency in Horry County at all relevant times are beyond contravention and require that Respondent's cases against her be dismissed as a matter of law under § 15-7-30(C)(1).

South Carolina Code § 15-7-30(C) alternatively mandates that any civil action "against a resident individual defendant must be brought and tried in the county in which the . . . (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred." As explained below, the "most substantial part of the alleged act[s] or omission[s]" by Deirdre W. Edmonds that ostensibly have given rise to the instant suit occurred in Horry County. The

Petition for creditor's claims, which are a subject of this litigation, filed by Defendant on behalf of Petitioner Deborah Harwell is alleged to have been in violation of a Horry County Family Court Final Order. The overwhelming majority of work performed by Defendant on behalf of her client Deborah Harwell occurred in Horry County, including all meetings with Mrs. Harwell and execution of pleadings by Mrs. Harwell, all legal research, drafting of pleadings, review of client files and documents, and discovery preparation and review of discovery. Defendants were even subpoenaed and required to testify in Family Court in Horry County concerning their representation of Mrs. Harwell. The only acts occurring outside of Horry County were the actual filing of the Petitions in Florence County Probate Court and three telephone conversations regarding the case that occurred while Defendant was traveling. While important, the physical filing of the petitions was only one alleged "act or omission" of the many out of which Petitioner's claims arise. South Carolina Code § 15-7-30(C)(2) provides for venue only in the county in which the "most substantial" part of the alleged acts or omissions giving rise to the cause of action occurred. These suits therefore *must* be brought and tried in Horry County, and hence they must be dismissed.

B. THE COURT SHOULD GRANT DISMISSAL TO DEFENDANT LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. PURSUANT TO S.C. CODE § 15-7-30(E)

Defendant Law Office of Deirdre W. Edmonds, P.A. satisfies both of S.C. Code § 15-7-30(C)'s criteria for venue in Horry County. Because these actions are pending in Florence County, the Court must dismiss the actions. South Carolina Code § 15-7-30(E) mandates that a civil action "against a ... company . . . must be brought and tried in the county in which the . . . (1) . . . company . . . has its principal place of business at the time the cause of action arose . . .". As Defendant Deirdre W. Edmonds attests in her sworn affidavit, which is attached hereto as **Exhibit A**, she is principal and founding member of Defendant Law Office of Deirdre W.

Edmonds, P.A. and she held those positions at the time the instant lawsuits arose. Ms. Edmond's Affidavit further swears that the Law Office of Deirdre W. Edmonds, P.A. has its "principal place of business" in Horry County and that it had its principal place of business in that county at all relevant times, including at the time the instant lawsuits arose. S.C. Code § 15-7-30(C)(1). The facts establishing the Law Office of Deirdre W. Edmonds, P.A.'s principal place of business in Horry County at all relevant times are beyond contravention and require that Respondent's cases against the Law Office of Deirdre W. Edmonds, P.A. be dismissed as a matter of law under § 15-7-30(E)(1).

South Carolina Code § 15-7-30(E)(2) is exactly the same as § 15-7-30(C)(2), discussed above. As such, and because Ms. Edmonds' affidavit establishes, beyond dispute, that the "most substantial part of the alleged act[s] or omission[s]" by the Law Office of Deirdre W. Edmonds, P.A. that ostensibly have given rise to the instant suits occurred in Horry County, the Law Office of Deirdre W. Edmonds, P.A. hereby incorporates and adopts Deirdre W. Edmonds' arguments regarding dismissal pursuant to S.C. Code § 15-7-30(C)(2), as if fully set forth herein.

III. FAILURE TO STATE A CLAIM

A. IF THE COURT DECIDES THAT IT HAS SUBJECT MATTER JURISDICTION OVER THE THIRD PARTY CLAIMS AND THAT VENUE IS PROPER, IT SHOULD NEVERTHELESS DISMISS THE THIRD PARTY CLAIM BECAUSE THE COMPLAINT DOES NOT SUFFICIENTLY ALLEGE THAT THE DEFENDANTS ACTED OUTSIDE OF THE SCOPE OF THEIR PROFESSIONAL REPRESENTATION OF MRS. HARWELL

For a claim seeking sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10, *et seq.*, and Rule 11 SCRCP, Defendants are immune from liability. Case law is clear on this point. In South Carolina, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client". Gaar v. N. Myrtle Beach Realty Co., Inc., 287

S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). "Further, an attorney owes no duty to a non-client unless he 'breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols., 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010) (citing Stiles v. Onorato, 318 S.C. 297 (1995)). Respondent's complaint alleges no facts to support a claim that Ms. Edmonds in any instance acted outside the scope of representation of her client. Outside of the mere declaratory statement "third-party defendant acted in her own personal interest and motivation outside the scope of her representation of the Petitioner", Respondent does not even make an attempt to show how Defendants acted outside the scope of her representation. (Complaint, ¶ 23). The complaint does not allege that Defendants ever had any personal or self-serving motivations for her actions in representing her client. Indeed, it does not allege that the Defendants had any relationship whatsoever with Respondents prior to, or outside of, her representation of Mrs. Harwell. Respondent merely makes a conclusion of law without corresponding factual support, thus failing to state a claim. Further, the "independent duty owed" to Respondent is not supported in fact. (Compl., ¶ 23). "Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim." Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 529, 339 S.E.2d 887, 889 (Ct. App. 1986) (citing *Restatement (Second) of Torts,* Section 674 comment d (1975)).

The Court should grant dismissal of this claim because Defendants are immune from liability and the complaint merely recites that a cause of action exists absent corresponding factual support.

B. THE COURT SHOULD GRANT DISMISSAL TO DEFENDANTS FOR RESPONDENT HAS FAILED TO PROPERLY ALLEGE THE EXISTENCE OF A CIVIL CONSPIRACY

The elements of a civil conspiracy in South Carolina are: (1) the combination of two or more people; (2) for the purpose of injuring the plaintiff; (3) which causes special damages, it is essential that the plaintiff prove all of these elements in order to recover. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006). Respondent fails to satisfy the required elements to allege a civil conspiracy. The complaint alleges no facts to show that Ms. Edmonds took any action outside the scope of the representation of her client, despite Respondent's conclusory assertions. Defendant did not act in any way with the intent of harming Respondent in the course of carrying out her duties owed to Petitioner. The South Carolina Rules of Professional Conduct state: "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system". S.C. App. Ct. R. Rule 407. See also S.C. App. Ct. R. Rule 407, RPC 1.3, Comment 1 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."). Defendants have done just that and the complaint fails to state how Defendants have done anything outside the bounds of the required zealous representation demanded of her by law. Alleging that an attorney combined with her client to injure the plaintiff is insufficient. This is precisely the kind of allegation that the Supreme Court rejected in Stiles v. Onorato:

> Onorato alleges, in paragraph 28 of his third-party complaint, that Bowen is the plaintiffs attorney in this action. Thereafter, in enumerating his conspiracy claim, Onorato realleges the prior paragraphs of his complaint so as to reallege Bowen's status as Stiles' attorney, then states that Bowen "formed a combination for the purpose of harming Mr. Onorato." Nowhere in the complaint does Onorato allege in what manner Bowen acted outside his role as Stiles' attorney nor does he allege that Bowen breached some independent duty owed to Onorato. Therefore, on the

> face of his complaint, the only reasonable inference is that Bowen was acting at all times in his capacity as Stiles' attorney. Under Gaar, Bowen is immune for any activities taken in his professional capacity. Accordingly, under Gaar, Onorato's complaint was fatally deficient and Bowen's Rule 12(b)(6) motion was properly granted.

318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). Therefore, Respondent has failed to satisfy the first or second required elements for a claim for civil conspiracy. See Brown Douglass ex rel. Louthian v. Boyce, 336 S.C. 318, 327, 519 S.E.2d 802, 806 (Ct. App. 1999), aff'd, 344 S.C. 5, 542 S.E.2d 715 (2001).

The third element requires proof of special damages which must be sufficiently stated and claimed. Sheek v. Lee, 289 S.C. 327, 328, 345 S.E.2d 496, 497 (1986). Specific facts must be present in the complaint to prove the existence of special damages and those damages alleged must go beyond the damages alleged in the other causes of action. Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989). The special damages must be alleged on their own, outside of general damages to avoid the problem of plaintiff double dipping. Again, Respondent mistakes the making of a conclusory allegation as being the equivalent of stating a claim. Respondent states "the Estate has suffered special damages", but does not say what they are or explain how they are any different from the damages in his other claims. (Compl., ¶ 22). Therefore, Respondent has failed to satisfy the third required element of a civil conspiracy claim.

C. THE COURT SHOULD DISMISS THE THIRD PARTY CLAIMS AGAINST DEFENDANTS BECAUSE RESPONDENT HAS FAILED TO ALLEGE FACTS SUFFICIENT TO SUPPORT HIS CLAIM OF SLANDER OF TITLE

To maintain an action for slander of title, the plaintiff must establish: (1) the publication; (2) with malice; (3) of a false statement; (4) that is derogatory to plaintiff's title; and (5) causes special damages; (6) as a result of diminished value of the property in the eyes of third parties. Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002). In Pond Place Partners the Court of Appeals held that defamatory statements made in judicial pleadings are

absolutely privileged, and that this principle bars a claim for slander of title based upon a judicial filing. Respondent's Third Party Complaint offers no basis to distinguish this clearly established rule. Legal pleadings that Defendants filed cannot be the basis for a claim for slander of title.

D. THE COURT SHOULD DISMISS THE THIRD PARTY CLAIM FOR ABUSE OF PROCESS

"The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." Hainer v. Am. Med. Intern., Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (citing Huggins v. Winn–Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967)). The Third Party Complaint alleges in conclusory fashion that the Defendants had an ulterior motive in filing the subject Petitions; to wit, to extort money from the estate, to obtain improper collateral advantage in the family court proceedings, and to cause disruption to the estate (Para. 39). The pleading alleges no facts whatsoever to support an inference that the Petitions were filed to accomplish anything other than what such petitions are intended to accomplish: to adjudicate Mrs. Harwell to be the surviving spouse and to correct the death certificate – which Respondent inexplicably opposes – and to stake her claim to her interest in the estate, which she has an absolute right to do. "A complaint which neglects to allege a perversion or misuse of the process by omitting facts necessary to show an improper willful act in the use of the process has not stated a cause of action for abuse of process and fails as a matter of law." Food Lion v. United Food & Commercial, 351 S.C. 65, 567 S.E.2d 251 (S.C. App., 2002)(affirming dismissal of complaint that made similar conclusory allegations of ulterior purpose).

E. **THE COURT SHOULD DISMISS THE CLAIMS OF LIBEL PER SE, LIBEL, DEFAMATION PER SE AND DEFAMATION BECAUSE RESPONDENT HAS FAILED TO ADEQUATELY PLEAD EACH CAUSE OF ACTION**

Respondent cannot successfully bring its claim of libel *per se*. Courts in South Carolina have held "printed or written statement which falsely and maliciously charges another with the commission of a crime" constitutes libel *per se*. Rogers v. Florence Printing Co., 230 S.C. 304, 307, 95 S.E.2d 616, 617 (1956). As laid out above, the complaint is devoid of any malicious intent from Defendant in any of her actions in service of Petitioner. The summons from the Florence County Probate Court was prepared by counsel at the instruction of her client with the intent of advancing Petitioner's legal cause, not as part of some personal vendetta on behalf of Defendant against Respondent. In addition, court pleadings and legal petitions have been found to be immune from suits of defamation and libel with public policy concerns abound for candor during legal proceedings. See Hartsock v. Reddick, 6 Blackf. 255, 255 (1842).

In order to sustain an action for libel, "special damages must be alleged and proved". Capps v. Watts, 271 S.C. 276, 284, 246 S.E.2d 606, 610 (1978). Moreover, "where a libel is not actionable *per se*, it has been held that mental suffering cannot be allowed as a part of the damages without proof of some other injury or damage" Brown v. Nat'l Home Ins. Co., 239 S.C. 488, 494, 123 S.E.2d 850, 853 (1962). The mere realleging of the same facts as the libel *per se* claim does not adequately plead the claim of libel *per quod* to its requisite form. Even if "the publication is not libelous *per se*, bad motive or malicious purpose to injure the plaintiff is not enough without an allegation that it effected the evil purpose by conveying to those to whom it was sent, a charge injuriously affecting the character or business of the plaintiff". Hubbard v. Furman Univ., 76 S.C. 510, 57 S.E. 478 (1907). Due to insufficient pleading in the request of

special damages and the simple reallaging of the inadequate pleadings of the libel *per se* claim, Respondent's libel *per quod* claim must also fail.

Slander is actionable as defamation *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012). Respondent asserts the commission of a crime of moral turpitude, and unfitness for one's profession have been alleged in court pleadings by Petitioner through Defendant. However, this claim of defamation fails for the same reasons discussed above for the claim of libel.

Respondent also fails on its claim of defamation *per quod*. Like the claim for libel, Respondent's claim for defamation also simply realleges the same pleadings as the claim of defamation *per se* without discussion as to special damages. For defamation, the same as libel, special damages and malice must be specifically plead and proven. Parrish v. Allison, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007). Again, there is nothing to prove malicious intent on the part of Defendants, and Respondent has not reinforced their assertion of special damages through any factual support.

For these reasons, Defendants ask the Court to dismiss the claims of libel *per se*, libel, defamation *per se*, and defamation.

F. RESPONDENT HAS FAILED TO MEET EACH REQUIRED ELEMENT TO SUSTAIN ITS CLAIM OF OUTRAGE AND SHOULD, THEREFORE, BE DISMISSED BY THE COURT

To state a claim for outrage, the plaintiff must show: (1) conduct by the defendant which is atrocious, utterly intolerable in a civilized community, and so extreme and outrageous as to exceed all possible bounds of decency; (2) the defendant acted with intent to inflict emotional

distress or acted recklessly when it was certain or substantially certain such distress would result from his conduct; (3) the actions of the defendant caused the plaintiff to suffer emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981). Respondent cannot succeed on this claim. The conduct of Defendants is not atrocious, utterly intolerable, or extreme and outrageous beyond all bounds of decency by any plausible application of the words to this case. Again, Defendants have solely acted within the scope of her duties to her client, Petitioner. It has been held even such conduct as egregious as retaliatory discharge has not been deemed to rise to the level of satisfying this first element for a claim of outrage, even when all three other elements of the claim have been met, including a finding of intentional infliction of emotional distress. See Corder v. Champion Rd. Mach. Int'l Corp., 283 S.C. 520, 523, 324 S.E.2d 79, 81 (Ct. App. 1984); and Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986). Further, "facts which may show extreme insensitivity on the part of the defendant do not necessarily establish the tort of outrage." Hawkins v. Greene, 311 S.C. 88, 91, 427 S.E.2d 692, 694 (Ct. App. 1993). The actions of Defendantd in the instant case are a far cry in severity from those held in the past as failing to rise to level of satisfying the first element, therefore, it cannot be found Defendants' actions here satisfy this first requisite element of a claim for outrage.

As to the second element, previously discussed at length, there is no factual basis for concluding Defendants ever acted with any malicious intent towards Respondent. It is far from certain, or substantially certain, such distress would result from Defendants' conduct, especially conduct as ordinary as an attorney carrying out standard good faith pleadings at the behest of their client. Consequently, the second element has been insufficiently pled as to Defendants.

Outside of broadly asserting Respondent has suffered severe emotional harm in the complaint, it has not alleged sufficient facts to sustain a claim for outrage. "In order to prevail in a tort action alleging damages for purely mental anguish, the plaintiff must show both that the conduct on the part of the defendant was 'extreme and outrageous', and that the conduct caused distress of an 'extreme or severe nature.'" Hansson v. Scalise Builders of S. Carolina, 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007). As already shown, Defendants' conduct in service of her client cannot have been "extreme and outrageous." Thus, Defendants' conduct does not rise to the requisite level of extremity for the third and fourth elements as well. Defendants cannot be asked to take into account the alleged emotional frailness of Respondent's mental state when filing common petitions for her client. It would be an unwarranted indictment of South Carolina's civil justice system to permit an action for outrage to supplant our courts' duty and ability to police the legal matters before them. Filing petitions in the Probate Court, for the precise purposes for which such petitions are intended, can hardly be considered intolerable in a civilized society.

For Respondent's inability to satisfy any of the elements for a claim of outrage against Defendants coupled with Defendants' immunity from suit by third parties, Defendants ask the Court to dismiss this claim.

CONCLUSION

For the above stated reasons, these actions against the Law Office of Deirdre W. Edmonds and Deirdre W. Edmonds, individually, should be dismissed based on the Probate Court's lack of subject matter jurisdiction to transfer this case to Florence County Circuit Court. In the alternative or additionally, these actions should be dismissed for improper venue. Finally, Respondent has failed to support its claims due to lack of sufficient pleading and inability to

meet required elements for its claims under the South Carolina Frivolous Civil Proceedings Sanctions Act and Rule 11 SCRCP, as well as its claims of civil conspiracy; slander of title; abuse of process; libel; defamation; and outrage. For these reasons, the Court should dismiss each of these claims brought by Respondent.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____

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ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina
July 18, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded to counsel of record via USPS this 18th day of July, 2016 as follows:

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FILED
2016 JUL 19 PM 12:30
COURT OF APPEALS
FLORENCE COUNTY, S.C.

CERTIFIED A TRUE COPY
Connie Rabinowitz
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
v.	)	**AFFIDAVIT OF THIRD-PARTY DEFENDANT DEIRDRE W. EDMONDS**
Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
Respondents,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED before me, Deirdre W. Edmonds, Esquire, who first being duly sworn deposes and says as follows:

1. I am a licensed attorney in the State of South Carolina and the principal of Law Office of Deirdre W. Edmonds, P.A., with a single office located at 1500 Highway 17 North, The Courtyard Suite 213, Surfside Beach, South Carolina 29578.

2. I am the principal and founding member of Law Office of Deirdre W. Edmonds, P.A., and was such at the time this lawsuit was filed.

3. The Law Office of Deirdre W. Edmonds, P.A.'s principal place of business is in

Surfside Beach, Horry County. None of my practice is in Florence County. My practice and law office are approximately 60 miles from the Florence County line, and approximately 70 miles to the Florence County courthouse.

4. I reside at 460 Holly View Lane, Loris, in Horry County, South Carolina. I live approximately 42 miles from the Florence County line and approximately 55 miles from the Florence County courthouse.

5. The Petitions, which are the subject of this litigation that I filed on behalf of my former client, Deborah B. Harwell, are alleged to have been in violation of a Horry County Family Court Final Order.

6. I was personally served with Respondents' Third Party Complaint at my practice and law office in Horry County. I was served on behalf of my client with Respondents' counterclaims against my client at my practice and law office in Horry County.

7. I was personally served with a subpoena issued by counsel for one or more of the Respondents in an action commenced by one or more of the Respondents in Horry County Family Court, which Family Court matter is peripherally related to the instant actions against me and my law firm.

8. I was subpoenaed to appear in Horry County Family Court on May 19, 2016 and required to testify as to my representation of my former client, Deborah B. Harwell, in the Family Court action commenced in Horry County Family Court by one or more of the Respondents against Deborah B. Harwell.

9. An overwhelming majority of the acts or omissions alleged by the Respondents to have been made concerning my practice, by the Law Office of Deirdre W. Edmonds, P.A., and/or by me occurred in Horry County.

10. All of the work that I performed on behalf of my former client, Deborah B. Harwell, was done in Horry County with the exception of (i) the actual filing of the probate actions in the Florence County Probate Court, one of which was filed via mail and two of which were hand-delivered by my assistant to the Florence County Probate Court, and (ii) approximately three [3] telephone conversations regarding the case that I conducted while traveling on unrelated personal matters outside of Horry County. I expended over 80 hours representing my former client in these matters in Horry County, and expended approximately 2 hours working on the case outside of Horry County, none of which, to the best of my knowledge occurred in Florence County.

11. All of my meetings with my former client, Deborah B. Harwell, occurred at my law office and practice in Horry County. All of the pleadings I drafted on behalf of Deborah B. Harwell occurred at my law office and practice in Horry County. All of the pleadings were executed by Deborah B. Harwell and/or me at my law office and practice in Horry County. All of my legal research was conducted in Horry County. All of my reviews of the client's file, all of my reviews of documents provided by my client, and all of my discovery preparation and review of discovery responses was conducted in Horry County.

12. Virtually every aspect of my representation of my former client and the legal work that I performed on behalf of my former client was conducted or occurred in Horry County, South Carolina.

FURTHER AFFIANT SAYETH NOT.

Deirdre W. Edmonds

SWORN TO before me this
15th day of July 2016.

Notary Public for South Carolina
My commission Expires: 10/25/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 16-CP-21-1435
Deborah B. Harwell,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
	)	
Respondents,	)	
	)	
v.	)	
	)	
Law Office of Deirdre W. Edmonds, PA; And Deirdre W. Edmonds, individually,	)	
	)	
Third-Party Respondents.	)	
	)	

MEMORANDUM OF RESPONDENT ESTATE OF DAVID W. HARWELL AND ROBERT BRYAN HARWELL INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE

BACKGROUND

This matter is before the Court pursuant to a number of Motions that have been filed by the Personal Representative for the Estate of David W. Harwell, R. Bryan Harwell, individually, and Deirdre Edmonds, individually and on behalf of her law firm. By way of procedural background, I will outline the Motions that are currently pending, and will outline our position on each one.

This series of matters began when Deborah Harwell and the late Judge David W. Harwell were engaged in Family Court litigation with one another. Judge Harwell and Deborah had signed a Pre-Nuptial Agreement prior to their marriage, and Judge Harwell's Family Court action was for a Decree of Separate Maintenance and Support and the enforcement of the Pre-

Nuptial Agreement. Ms. Harwell contested the agreement and was represented by Family Court attorney, Julaan Derrick. A mediation conference was held and the parties reached a written Mediated Settlement Agreement. The settlement agreement was approved by the Family Court on July 21, 2015 by Order of Judge James A. Spruill, III, dated July 24, 2015. Deborah Harwell did not appear at the hearing, and instead signed an Affidavit of Non Appearance which was presented to the Court by her attorney.

The agreement resolved all issues involved in their marriage including the Pre-Nuptial Agreement. Under the agreement, Deborah was to receive a mountain house (paid for), $76,000.00 by check, Judge Harwell's General Assembly Retirement Pension, and some personal property. She has received all of those items. Judge Harwell was to receive all other assets. More importantly, the court approved agreement provided as follows: **"Both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other. Each party's estate shall be bound by the terms of this agreement."**

Judge Harwell passed away in September of 2015. Shortly thereafter, Ms. Harwell filed three separate claims or petitions by attorney Edmonds against the Estate of David W. Harwell. The first claim is for $3,100,000, claiming the Pre-Nuptial Agreement as the basis for the claim. The second claim is for reimbursement for an obituary she ran without authorization from the estate in the amount of $1,475.25. The third claim is a Petition requesting Judge Harwell's Death Certificate be amended to reflect Deborah as the surviving spouse, and an adjudication that she is, in fact, a surviving spouse. This Petition also names R. Bryan Harwell, individually and as personal representative, alleging that he has committed a felony by intentionally providing DHEC with false information in the preparation of leading to the issuance of the death certificate in that Ms. Harwell's name was not on it. The claims were disallowed by the PR. Ms. Harwell has now also filed a fourth petition, "Pro Se" petition for Elective Share, which was not signed by Edmonds as attorney.

R. Bryan Harwell, both in his individual capacity and his capacity as PR of the Estate of David W. Harwell, filed counterclaims against Deborah Harwell, as well as Third Party claims against Edmonds. The allegations and claims against Edmonds and Deborah Harwell request, among other things, sanctions under the South Carolina Frivolous Civil Proceedings Act, S.C.

Code Ann., Section 15-36-10, et. seq. and Rule 11 violations. There are also claims against them for civil conspiracy, outrage, abuse of process, libel, libel per se, defamation, defamation per se, slander of title and a request for attorney's fees and costs under the S.C. Probate Code.

The matter was transferred from Probate Court to the Court of Common Pleas by Order of Probate Judge Kenneth E. Fulp, Jr. dated June 10, 2016. The motions now pending before the Court, filed by R. Bryan Harwell individually and as PR, are Motions to Dismiss all of Deborah Harwell's claims under against the Estate of David W. Harwell and R. Bryan Harwell based on failure to state a claim 12(b)(6), or judgment on the pleadings and under the doctrines of res judicata, law of the case, collateral estoppel, laches, waiver, accord and satisfaction, payment in full, release and unclean hands. There is also a motion for SCFCPA sanctions and Rule 11 sanctions. The motions now pending on behalf of Deidre Edmonds are Motions to Dismiss the Third Party claims against her and her law firm.

By virtue of the Contempt Order of Judge Buckhannon dated July 20, 2016, Ms. Harwell has been held in contempt of the Family Court Order in a number of matters. The Order did not hold her in contempt for filing these claims against the estate. The Family Court judge stated these claims were clearly waived by Ms. Harwell, but only the Probate Court could order Ms. Harwell to dismiss them. Thus, as one of our arguments to dismiss is for lack of subject matter jurisdiction, but as the Family Court has ruled otherwise we will devote this brief to the other bases for dismissal. The claims filed by Ms. Harwell that are currently pending before this Court were discussed at the Family Court hearing. The Family Court Judge, however, determined that although she believes the claims are meritless and should be dismissed, the Family Court does not have the authority to dismiss them, and must be left to the Probate Court (now the Circuit Court).

ESTATE'S AND BRYAN HARWELL'S MOTION TO DISMISS DEBORAH HARWELL'S CLAIMS

Respondent contends that all of the claims filed by Deborah Harwell should be dismissed based on a number of legal theories that will be discussed below. However, the general basis for this Motion is that a Court Order exists in which Deborah Harwell entered into a Court approved agreement. This Court approved agreement provided that she waived any claims she may have in

and to the Estate of David W. Harwell. That Order was not appealed. Ms. Harwell could have contested the division of property and/or her interest under the Pre-Nuptial Agreement had she chosen to do so. She was represented by very competent and experienced retained counsel and testified in the Family Court by Affidavit that she instead wished for the agreement to be approved as a full and final settlement of all monetary issues between her and Judge Harwell, including her rights under the Pre Nuptial Agreement. She now is attempting to recover additional monies from the estate, alleging she is entitled to a spouse's elective share and is entitled to $3,100,000.00, somehow based on the Pre Nuptial Agreement. She has already received all payments and properties due under the binding unappealed family court order which included her waiver of claim against the estate.

Res judicata applies and is an appropriate doctrine on a 12(b)(6) motion to dismiss for failure to state a claim. See *Riedman Corp. v. Greenville Steel*,419 S.E.2d 217 (1992). "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy,* 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (citation omitted). "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.* (citation and quotation marks omitted).

"Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding." *Pye v. Aycock,* 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct.App.1997). Under this doctrine, a final judgment on the merits in a prior action will preclude the parties from re-litigating any issues actually litigated or those that might have been litigated in the first action. *Hilton Head Ctr. of South Carolina, Inc. v. Public Serv. Com'n.,* 294 S.C. 9, 362 S.E.2d 176 (1987); *Foran v. USAA Cas. Ins. Co.,* 311 S.C. 189, 427 S.E.2d 918 (Ct.App.1993).

"Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *Yelsen Land Co. v. State,* 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (citation and quotation marks omitted). "The doctrine [of res judicata] flows from the principle that *public interest* requires an end to litigation and no one should be sued twice for the same cause of action." *Duckett v. Goforth,* 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct.App.2007)

(emphasis added) (citation omitted); *see also S.C. Dep't of Soc. Servs. v. Basnight,* 346 S.C. 241, 248, 551 S.E.2d 274, 278 (Ct.App.2001) (" 'The doctrine of res adjudicata (or res judicata) in the strict sense of that time-honored Latin phrase had its origin in the principle that it is in the public interest that there should be an end of litigation and that no one should be twice sued for the same cause of action.' " (quoting *First Nat'l Bank of Greenville v. U.S. Fid. & Guar. Co.,* 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945))).

"**The doctrine of collateral estoppel**, or issue preclusion, on the other hand, rests generally on equitable principles." *Town of Sullivan's Island v. Felger,* 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct.App.1995) (citing *Watson v. Goldsmith,* 205 S.C. 215, 31 S.E.2d 317 (1944)). In *Watson,* our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

> Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation[ ])[.] ... Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.
>
> 205 S.C. at 221–22, 31 S.E.2d at 319–20 (citations omitted) (emphasis added); *see also First Nat'l Bank of Greenville,* 207 S.C. at 24, 35 S.E.2d at 56–57 (citing *Watson*) (contrasting the origins of res judicata and collateral estoppel).
>
> *Judy v. Judy,* 393 S.C. 160, 169-71, 712 S.E.2d 408, 412-14 (2011).

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Judy v. Judy,* 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe,* 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct.App.1984). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Snavely v. AMISUB of*

S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008). *Carolina Renewal, Inc. v. S. Carolina Dep't of Transp.*, 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009).

In *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984), this court distinguished the two concepts as follows:

> The doctrines of res judicata and collateral estoppel are, of course, two different concepts. A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues actually and necessarily litigated and determined in the first suit. 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 n. 1 (Ct.App.1984) (citations and quotation marks omitted).

In this case, Deborah Harwell should be precluded from filing any of the claims against the Estate now pending. She litigated the Pre Nuptial Agreement and the marital equitable division in the Family Court action, and that action was heard and concluded by agreement of the parties and a Final Order approving the agreement. Filing these claims is exactly what she waived in the Family Court action. It is clear from the transcript excerpts being attached hereto that Ms. Harwell clearly had the advice of competent counsel and a financial consultant; she acknowledged having full and complete financial disclosure from Judge Harwell; she confirmed that she clearly understood the agreement; and, that she wanted the agreement approved. This is the exact situation that res judicata and collateral estoppel were designed to prevent, and is especially true regarding her "elective share" claim which was filed **after her own retained Probate Court lawyer** testified under oath that, in her opinion, Deborah Harwell is not entitled to receive any monies from the Estate.

Additionally under S.C. Probate law, because there was a final family court order that terminated her property rights she was not considered a "surviving spouse" and was considered "divorced" for purposes of the Probate Code. See Sec. 62-2-802 (b)(3) and Sec.62-2-507(a)(2).

As an additional ground for dismissing this action, R. Bryan Harwell submits that this Court should dismiss the action under S.C.R.C.P., Rule 12(b)(8) in that there was a Family Court action pending between the parties at the time she filed her claims. In fact, that action was

pending until the Court issued its Order yesterday. The Family Court action dealt with the exact same issues as this action—is Deborah Harwell entitled to receive any money from David W. Harwell's estate. In the Family Court action, she waived it. In the Probate Court, she is now claiming it.

Her claims against the estate must be dismissed due to a valid unappealed Family Court order which prohibits her claims and specifically waives them. To hold otherwise would bring no finality to legal matters and create chaos, which she has achieved by filing these claims in violation of a lawful order.

Additionally, with regard to Ms. Harwell's petition for Amendment of Death Certificate, the Probate Court had no subject matter jurisdiction to grant that relief and should be dismissed. See Sec. 62-1-302, which sets forth the subject matter jurisdiction of the Probate Court. In the event there is subject matter jurisdiction, then her claim to be listed as a "surviving spouse" should be denied for purposes of establishing any property rights under the probate code pursuant to the probate statutes cited above 62-2-802(b)(3) and 62-2-507(a)(2).

REQUEST FOR SANCTIONS

Respondents request for sanctions against Deborah Harwell and her then attorney Diedre Edmonds pursuant to the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann., Section 15-36-10, et. seq., and pursuant to S.C.R.C.P., Rule 11. **S.C.Code Ann. § 15–36–10(A)(4)(a)–(c) (Supp.2015)** provides as follows:

> An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:
>
> (a) filing a frivolous pleading, motion, or document if:
>
> (i) the person has not read the frivolous pleading, motion, or document;
>
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C.R.C.P., Rule 11(a) provides as follows: "Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address. ..... The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." **Rule 3.1 of Appellate Court Rule 407** Professional Conduct provides: MERITORIOUS CLAIMS AND CONTENTIONS. "A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...."

Respondents contend they are entitled to recover sanctions from both Edmonds and Deborah Harwell under both provisions. Deborah Harwell has now filed three claims against the Estate after asking the Family Court to approve an agreement wherein she waived such an interest. Additionally, she filed the fourth claim for an "elective share" after hearing her attorney testify under oath that she was not entitled to receive any funds from the estate based upon that Family Court Order (See Transcript of Edmonds' testimony, page 37). Clearly, her claims are frivolous in light of her waiver of any interest in the Estate and her subsequent attempt to obtain millions of dollars from it. We would direct the Court to page 13 of Judge Buckhannon's Order wherein this issue is discussed in detail and the frivolity of these claims is noted. The unappealed valid lawful Family Court Order not only prohibited claims from being filed against the estate, but it also prohibited Ms. Harwell from making disparaging remarks against David Harwell's family members.

As to Edmonds, Respondents seek sanctions for two reasons. First, she signed and filed claims for $3,100,000.00 and $1,485.00 knowing and admitting under oath that her client was not entitled to receive any money from Judge Harwell's estate. She argues that she did it because Ms. Harwell had a short time window, yet Ms. Harwell has had no problem filing her other claims and petitions Pro Se. Secondly, she accused the PR, personally and as PR, of committing a felony without sufficiently investigating the matter at all and without speaking with anyone involved in the matter, particularly the funeral home. By statute, Sec.44-63-74, the next of kin here the P.R., gives the decedent's information to the funeral home and signs a DHEC worksheet for the funeral home and the next of kin/P.R. has no involvement directly with DHEC concerning the preparation of the death certificate. Only the funeral home deals directly with DHEC, whose employees issue the official death certificate. After Edmonds initially filed the three petitions, she was contacted by respondent's attorneys as a courtesy to alert her as to the family court order which prohibited the claims and the disparaging remarks. She was requested to withdraw the claims because of the order and declined to do so. She then compounds the misconduct by amending those pleadings to request an award of attorney's fees and costs from the estate and reasserting the same disparaging allegations in violation of the Family Court Order.

Further, instead of merely alleging a request for amendment of a death certificate, she makes a felony allegation against a sitting federal judge knowing the ramifications of such an accusation and knowing that it was totally unnecessary to a simple request for amendment of a death certificate. She chose to do this in knowing violation of an order prohibiting such a disparaging statement, and is on notice of the statute above which limits the next of kin's involvement to giving information to the funeral home, who in this case verified that they were given ALL the information by Respondent. She persisted in this allegation even after being provided with evidence from the funeral home. What DHEC does with the information is DHECs protocol, (whatever that may be) but to accuse someone of a felony in the face of evidence provided to the contrary by the funeral home as to the information provided by the family member, and in knowing violation of an order prohibiting disparaging remarks against Respondent warrants appropriate sanctions. Again, Sec. 44-63-74 limited the Respondents involvement to the funeral home and the funeral home dealt with DHEC. In fact, despite Respondent's counsels repeated phone calls to DHECs counsel and subpoenas for DHECs

protocol regarding death certificates preparation for matters where a decedent is married but separated and a Family Court Order in existence, Respondent has still not been able to determine even if there are any issues that need to be corrected. With all the legal attention to this matter, DHEC has not contacted either the funeral home or the PR requesting any additional information nor notified the PR that there is an error on the certificate.

The Supreme Court dealt with an attorney's duty to investigate in Ex Parte Gregory, 378 S.C. 430663 S.E.2d 46 (2008), in affirming a sanctions award of attorney's fees of approximately $27,000.00. In *Gregory*, the attorney filed an action for conversion against another attorney based solely on the allegations made by the client and without conducting an investigation into the claim itself. In fact, "Appellant [attorney Gregory] testified he did not contact respondent [prevailing attorney] because he thought if respondent would not respond to his clients or the North Carolina attorney, then he would not respond to him. He also felt it was unnecessary to contact respondent because he expected Disciplinary Counsel to take care of it. Appellant stated he did not get respondent's file because he did not think he would learn anything from it." *Ex parte Gregory*, 378 S.C. 430, 436, 663 S.E.2d 46, 50 (2008). In response to the attorney's defense, the Court noted as follows:

> We find that while an attorney or a *pro se* litigant does not have a duty to consult with a potential defendant prior to filing suit, before alleging conversion against an attorney for misappropriation of client funds or legal malpractice, **a reasonable investigation is necessary.** (emphasis added)
>
> The above facts support the lower court's conclusions that appellant failed to properly investigate the matter prior to filing it, and that the action was frivolous. See *Father v. South Carolina Dep't of Soc. Servs., supra* (a party who makes a frivolous claim has committed a more egregious act than one who merely acts without substantial justification). *Gregory* at p. 439.

Basically, the attorney in Gregory did nothing except file a lawsuit based on the allegations of the client solely. The same is true here. Edmonds alleged that R. Bryan Harwell committed a felony by intentionally providing false information to DHEC without any investigation whatsoever, and after reading the Family Court Order in which her client (Deborah Harwell) had waived any claim against Judge Harwell's Estate and which prohibited disparaging remarks against the PR and the Harwell family. She did not contact Bryan Harwell to find out what documents he provided to the funeral home, nor did she contact the funeral home to see

what documents were prepared by them and sent to DHEC. Attorney Gregory accused an attorney of "stealing money" without conducting an investigation, and Attorney Edmonds has accused R. Bryan Harwell of committing a felony without conducting one. Edmonds and Ms. Harwell filed claims against the estate in knowing violation of the Order, and made disparaging remarks against R. Bryan Harwell in knowing violation of the Order without even verifying their claim with the funeral home, and persisted in such even after receiving information from them that he provided ALL the information to the funeral home.

EDMONDS' MOTION TO DISMISS

Third Party Defendants Edmonds, individually and on behalf of her law firm are asking this Court to dismiss them as a party to this matter based upon three grounds: (1) the Probate Court lacks subject matter jurisdiction over them; (2) the matter is filed in the wrong venue; and (3) failure to state a claim upon which relief may be granted.

As to Subject Matter Jurisdiction, S.C. Code Ann. § 62-1-302(a) provides: "To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court....; (emphasis added).

Edmonds has assisted Deborah Harwell in attempting to obtain money from an estate, even though she knows Harwell is not entitled to it. As a result of those actions, Respondent contends these actions are "related to the estates of a decedent" and give the Probate Court jurisdiction to hear these causes of action even though they are tort claims. The Probate Court (and this Court by removal) does not lack jurisdiction over tort action when they are related to estates. See *Matthews vs Matthews*, WL 10080099 (S.C. Ct. of App. 2010) and *Fulmer v. Cain* 380S.C. 466,471 (2008). Additionally, these tort claims are properly asserted as Rule 13 compulsory counterclaims and Rule 14 third party claims related to the estate of the decedent.

Respondent is both a PR and beneficiary of the estate and these claims are related to the estate of David W. Harwell. Also see *Judy v. Judy* 393 S.C. 160(2011). Additionally as the relief sought on the various counter claims and third party claims exceed $5,000 removal of them is appropriate pursuant to Sec. 62-1-302.

As To Venue, S.C. Code Ann. § 15-7-30(C) provides that "A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred. In this case, the "most substantial part of the alleged acts" occurred in Florence County. Specifically, the actions giving rise to the causes of action against Harwell and Edmonds are the filing of frivolous claims against Judge Harwell's estate. All of these filings were made in Florence County, and all of the litigation involving Judge Harwell's estate is taking place in Florence County. The misconduct is the filing of the claims, regardless of where the documents were actually prepared.

As To Failure to State A Claim, Respondents will briefly try to address Edmond's arguments. At the outset, Respondents believe that their claims are properly pled. However, to the extent this court deems otherwise, Respondents believe and request the right to amend under Rule 15, as no responsive pleading has yet been filed.

As to Edmond's argument that there is no allegation that Edmonds acted outside the scope of her representation or that there was any breach of independent duty to a third person, such is not the case as the complaint alleges that she acted both individually and as agent (par. 30). The complaint alleges she had an independent duty under Rule 11, an independent duty under Sec. 15-36-10 and more importantly a specific not to assist in the knowing and willful violation of a valid lawful South Carolina Family Court Order, and that she breached those duties. It further alleges alternatively she acted in her own personal interest and motivation. (par.41). Further the claim for conspiracy sufficiently alleges the elements and specifically alleges special damages to the estate. It further alleges in that same paragraph with special damages the conspiracy has caused disruption and administration of the estate, and to the extent further explanation is necessary the PR will allege that with regard to interference with the estate and due to this conspiracy and unusual disruption and interference, the PR would normally have waived any request for compensation against the estate, but due the enormous caused by this

interference, he will now be seeking pursuant to the statute permitting such instead of waiving it. This is a special damage due to this interference with the normal administration of an estate. Again to the extent necessary the PR requests the right to amend if necessary. Further, to argue that Edmond's conduct simply constitutes required zealous representation demanded of her by law, simply ignores the duty of every attorney to comply with lawfully issued court orders, and not to pursue frivolous claims.

As to Edmond's claim that the slander of title claim is insufficient in that statements in all judicial filings are absolutely privileged. Respondents would argue that the privilege is not without limits. Certainly, for the privilege to even apply, a court must have jurisdiction, and also the statements must be relevant and pertinent to the issues in the case. See *Redfearn v Pusser*, 276 SC 506 (1981) . In this case, these pleadings are filed in violation of a lawful order and should not be entitled to any privilege as a result. The privilege presumes the right to properly file them in a proper court. The wrongfully recording an unfounded claim against the property of another is actionable as slander of title. See *Huff v Jennings* 319 SC 142 (Ct.App.1995). Clearly these filings in violation of a lawful order constitute slander of title.

As to Edmonds claims regarding insufficiency of the defamation per se or libel per se claims, these claims are sufficiently pled and damages are presumed due to the nature of the allegations. Damages are presumed, and special damages do not have to be pled. She has accused Respondent of a felony crime and as such the defamation is clear on its face and damages are presumed. Also, there is no entitlement to absolute privilege because the allegation was made in connection with the petition to amend the death certificate in the probate court. As explained earlier, the Probate Court does not have subject matter jurisdiction to amend a certificate. Also for the privilege to apply, the court in which they were made must have jurisdiction. See *Redfearn*. Id.

As to the claim for outrage, Respondent believes it is sufficiently alleged and under the unique circumstance of this case very much warranted. You take your plaintiff as you find them. Here the respondents father had died and naturally the respondent has grieved , and to add more misery to the Respondent, Edmonds assists a client in violating a valid lawful order, and then accuses the unnecessarily Respondent of committing a felony crime knowing that the Respondent is a sitting federal judge and clearly aware of the ramifications of such an

accusation. She does not simply request an amendment of the certificate, rather persists in making a criminal allegation unnecessarily even in the face of the funeral homes' information and a statute that limits the Respondents direct contact to the funeral home and not DHEC in the preparation of the certificate.

IN CONCLUSION, RESPONDENT REQUESTS THAT HIS MOTION TO DISMISS THE PETITIONER'S CLAIMS BE GRANTED; THAT HIS REQUEST FOR SANCTIONS BE GRANTED UNDER RULE 11 AND THE FRIVOLOUS PROCEEDINGS ACT; THAT A HEARING BE SET ON THE ISSUE OF SANCTIONS; AND THAT EDMONDS MOTION TO DISMISS BE DENIED.

Barth, Ballenger & Lewis, LLP

Kevin M. Barth
Post Office Box 107
Florence, South Carolina 29503
(843) 662-6301
kbarth@hbbh.net
Attorneys for Respondent R. Bryan Harwell Individually and as Personal Representative of the Estate of David W. Harwell

Florence, South Carolina

July 21, 2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2101435

PLAINTIFF(S)		DEFENDANT(S)	
Deborah B Harwell		R Bryan Harwell As Personal Representative Department Of Health And Environmental Control Division Of V Law Office Of Deirdre W Edmonds	Estate Of David W Harwell Robert Bryan Harwell Deirdre W Edmonds
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

CERTIFIED A TRUE COPY
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

FILED
2016 SEP -1 PM 2:30
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

9/1/2016

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on **August 31, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **September 2, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard PO Box 6338 West Columbia, SC 29171-6338

Gena Phillips Ervin Orr, Elmore & Ervin, LLC PO Box 2527 Florence, SC 29503-2527
Kevin Mitchell Barth PO Box 107 Florence, SC 29503
Barbara J. Wagner PO Drawer H Charleston, SC 29402-0197
John Harleston 2600 Bull Street Columbia, SC 29201
M. Dawes Cooke Jr. PO Drawer H Charleston, SC 29402-0197

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA	)	IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	Case No. 2016-CP-21-1435
Deborah B. Harwell,	)	
Plaintiff,	)	**PARTIAL STIPULATION OF DISMISSAL PURSUANT TO** Rule 41(a)(1), SCRCP
Vs.	)	
Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell,	)	
Defendant.	)	

FILED
2016 AUG 31 PM 4:01
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Plaintiff Deborah B. Harwell voluntarily dismisses her Petition for Elective Share filed by her *pro se* on May 25, 2016 in Case No. 2015-ESE-21-000778 and later removed to this Court. This dismissal is with prejudice.

Plaintiff Deborah B. Harwell voluntarily dismisses without prejudice the creditor's claims she filed in Case No. 2015-ES-21-000778 and later removed to this court. These creditor's claims were filed on March 9, 2016.

Plaintiff Deborah B. Harwell does not dismiss her Amended Petition to be Declared the Surviving Spouse and the Petition to Amend the Death Certificate, filed in Case No,. 2015-ES-21-00778 and later removed to this Court. It will, however, be amended.

I affirm that the no answers or motions for summary judgment have been filed as to the matters being dismissed herein.

Desa Ballard
Ballard & Watson
Post Office Box 6338

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

COUNSEL FOR DEBORAH B. HARWELL

August 29, 2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED 2016 OCT 21 PM 3:23 CCCP & GS FLORENCE COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2101435

PLAINTIFF(S)		DEFENDANT(S)	
Deborah B Harwell		R Bryan Harwell As Personal Representative Department Of Health And Environmental Control Division Of V Law Office Of Deirdre W Edmonds	Estate Of David W Harwell Robert Bryan Harwell Deirdre W Edmonds

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

CERTIFIED TRUE COPY CLERK OF COURT FLORENCE CO. SC

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

10/21/2016

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **October 21, 2016**, and a copy mailed first class or placed in the appropriate attorney's box on **October 24, 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard PO Box 6338 West Columbia, SC 29171-6338

Gena Phillips Ervin Orr, Elmore & Ervin, LLC PO Box 2527 Florence, SC 29503-2527
Kevin Mitchell Barth PO Box 107 Florence, SC 29503
Barbara J. Wagner PO Drawer H Charleston, SC 29402-0197
John Harleston 2600 Bull Street Columbia, SC 29201
M. Dawes Cooke Jr. PO Drawer H Charleston, SC 29402-0197

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Court Reporter

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Estate of David W. Harwell,	IN THE PROBATE COURT TWELFTH JUDICIAL CIRCUIT Case No. 2015-ES-21-778
STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Estate of David W. Harwell,	IN THE PROBATE COURT FOURTEENTH JUDICIAL CIRCUIT Case No. 2016-ES-07-302
STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Deborah B. Harwell Plaintiff, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environment Control Division of Vital Records, Defendants, v. Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually Third party defendants	IN THE CIRCUIT COURT TWELFTH JUDICIAL CIRCUIT CASE NO. 2016-CP-21-01435

STIPULATIONS

FILED
2016 OCT 19 PM 4:18
CLERK OF COURT-PROBATE
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

db p. 1 of 3

All of the parties hereby stipulate and agree as follows as it relates to all of the matters currently pending between these parties:

1. Deborah B. Harwell dismisses without prejudice all of her pending petitions and claims against R. Bryan Harwell as Personal Representative of the Estate of David W. Harwell, and R. Bryan Harwell, individually, with the exception of her petitions and claims for amendment of death certificate and to be declared the surviving spouse on the DHEC death certificate and for an "elective share of said Estate". *See* Paragraph 3 as to that claim.

2. Deborah B. Harwell dismisses her petition and claim for an elective share of the Estate of David W. Harwell with prejudice.

3. Deborah B. Harwell's petition and claim for amendment of death certificate and to be declared the surviving spouse for purposes of the DHEC death certificate is dismissed with prejudice and as moot, as DHEC has now already amended the death certificate to reflect her as the surviving spouse for vital records purposes with Bryan Harwell's consent.

4. DHEC shall be dismissed as a party to the within litigation with prejudice.

5. The pending Motions to Dismiss all of Deborah Harwell's claims filed by R. Bryan Harwell, as Personal Representative of the Estate of David W. Harwell, are now moot.

6. R. Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, has asserted motions and claims for sanctions against Deborah B. Harwell and Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually on the basis of Rule 11 violations and claims of frivolous proceedings. These motions and claims for sanctions

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remain pending. However, the Motions for Sanctions have been neither fully briefed nor argued, and no hearing is being requested at this time.

7. The other claims filed by R. Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, against Edmonds are dismissed without prejudice, with the exception of the motions and claims for sanctions under Rule 11 and frivolous proceedings.

8. The other counterclaims filed by R. Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, against Deborah Harwell remain pending along with the motions and claims for sanctions.

9. These Stipulations are not intended to preclude any Motion or claims any of the parties may have against one another now or in the future, whether the claims are currently pending or not.

WE STIPULATE TO THE ABOVE:

KEVIN M. BARTH
Attorney for Estate of David Harwell and
R. Bryan Harwell

Desa Ballard 10-4-2016
Desa Ballard
Attorney for Defendant,
Deborah B. Harwell

M. Dawes Cooke
Barbara J. Wagner
Attorneys for Defendants, Edmonds

John Harleston
Attorney for DHEC

October _____, 2016

p. 3 of 3

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7. The other claims filed by R. Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, against Edmonds are dismissed without prejudice, with the exception of the motions and claims for sanctions under Rule 11 and frivolous proceedings.

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Attorney for Estate of David Harwell and
R. Bryan Harwell

Desa Ballard
Attorney for Defendant,
Deborah B. Harwell

M. Dawes Cooke
Barbara J. Wagner
Attorneys for Defendants, Edmonds

John Harleston
Attorney for DHEC

October _____, 2016

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9. These Stipulations are not intended to preclude any Motion or claims any of the parties may have against one another now or in the future, whether the claims are currently pending or not.

WE STIPULATE TO THE ABOVE:

KEVIN M. BARTH
Attorney for Estate of David Harwell and
R. Bryan Harwell

Desa Ballard
Attorney for Defendant,
Deborah B. Harwell

M. Dawes Cooke
Barbara J. Wagner
Attorneys for Defendants, Edmonds

John Harleston
Attorney for DHEC

October _____, 2016

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Deborah B. Harwell Plaintiff, v. Robert Bryan Harwell, individually and As Personal Representative of The Estate of David W. Harwell, and South Carolina Department of Health And Environment Control Division of Vital Records, Defendants, v. Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually Third party defendants	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO. 2016-CP-21-01435 **AFFIDAVIT OF PETER D. PROTOPAPAS**

FILED

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF PETER D. PROTOPAPAS
COUNTY OF RICHLAND)

FILED

NOW COMES Peter D. Protopapas, who states, under oath, the following:

My qualifications to give expert testimony include the following:

a. I have been licensed to practice law in the State of South Carolina since 2000;

b. My practice focuses on professional negligence, ethics defense, business litigation, and civil litigation in general;

c. I have made numerous CLE presentations on legal ethics; and

d. I am familiar with the standard of care applicable to lawyers in the circumstances involved in this case and my opinion is to a reasonable degree of certainty in this field.

BACKGROUND

I have been asked for my opinion on whether or not the filing of the following documents violate the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"), S.C. Code Ann. § 15-36-10 and/or Rule 11 of the South Carolina Rules of Civil Procedure:

1. January 14, 2016 Statement of Creditor's Claims for Obituary Costs and for $3.1 million based on a Prenuptial Agreement;

2. March 1, 2016 Petition for Adjudication as Surviving Spouse and For Amendment of Death Certificate;

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

3. March 9, 2016 Petitions for Creditor's Claims on the Prenuptial Agreement and Obituary Costs;

4. April 29, 2016 Amended Petition regarding Surviving Spouse, Amendment of Death Certificate and Attorneys' Fees; and

5. May 25, 2016 Petition for Elective Share.

In preparing my opinion, I have read the relevant statutes, rules, and case law as well as numerous documents from the action itself. These are all items that an expert would normally rely upon when forming an opinion. Attached as **Exhibit A** is a listing of the documents I have reviewed. I have also reviewed the memoranda and exhibits used at hearings as well as those attached to filings.

STANDARD UNDER THE FRIVOLOUS PROCEEDINGS ACT

As an initial matter, The Frivolous Proceedings Act ("the Act") found at S.C. Code § 15-36-10 addresses the necessary steps to be undertaken prior to filing a pleading or document in a civil or administrative action. If those steps are not taken, Courts can impose sanctions.

Section A (1)-(3) of the Act requires a pleading or document must be signed by a party or attorney. The signature certifies that the pleading or document

1. has been read;

2. that a reasonable attorney would believe the pleading or filing was warranted under facts or law;

3. that if not warranted under existing law, a good faith argument exists for extension, modification, or reversal of existing law;

4. that a reasonable attorney in the same circumstance would believe that the filing is not merely to harass or injure the other party; and

5. that a reasonable attorney in the same circumstance would believe that the claim or defense is not frivolous, interposed for delay or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

Section A(4) of the Act sets forth that an attorney or pro se litigant **may** be sanctioned for participating in a civil or administrative action or defense for:

a. filing frivolous pleading or motion or document **if**
   i. The person has not read it;
   ii. A reasonable attorney would believe it was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law;
   iii. A reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation or defense was intended to merely harass or injure the other party; or
   iv. a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
b. making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

c. making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

As it pertains to a reasonable attorney, a reasonable attorney would be one who complies with our Rules of Professional Conduct. For example, Rule 3.1, Meritorious Claims and Contentions, provides that a lawyer shall not bring or assert an issue unless there is a basis in law and fact for doing so. An "action is frivolous . . . if the lawyer is unable to . . . make a good faith argument on the merits of the action taken . . . ." See SCACR Rule 3.1 Comment 2. It is a lawyer's ethical duty not to bring or defend an action or raise an issue unless there is a non-frivolous basis for doing so. *See In re James*, 267 S.C. 474, 229 S.E.2d 594 (1976) (lawyer sued insurer without making a good faith attempt to collect insurance without litigation); *Matter of Cheek*, 303 S.C. 280, 440 S.E.2d 139 (1991) (libel actions against party filing grievance were filed merely to harass or injure another); *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008) (plaintiff's counsel sanctioned for failing to investigate claim prior to bringing suit).

Section B(2) of the Act sets forth that if a document is signed in violation of section A(4) then the court by motion, or on its own may impose sanctions that are just, equitable and proper. In section E, the Act sets forth the non-exclusive list of mitigating factors for a Court to consider when imposing sanctions:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

The Act is applicable to both lawyers and non-lawyers.

STANDARD UNDER S.C.R.C.P. RULE 11

Rule 11(a), SCRCP provides in pertinent part: The written or electronic signature of an attorney or party constitutes a certificate by her that she has read the pleading, motion or other paper; that to the best of her knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

Pleadings, motions or other papers not signed or that do not comply with Rule 11 are to be stricken. "If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee." Rule 11(a) S.C.R.C.P.

Pursuant to Rule 11, "an attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments." *Burns v. Universal Health Servs., Inc.*, 340 S.C. 509, 513, 532 S.E.2d 6, 9 (Ct. App. 2000). "The attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it." *Id.* Rule 11 provides that "the sanction may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." *See Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (attorney's sole purpose for bringing interpleader action, was to prevent or delay satisfaction of judgment for return of attorney fees secured by disgruntled clients.); *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008) (counsel would have understood the frivolous nature of the conversion claim had he conducted a reasonable investigation); and *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014) (abrogated on other grounds by *Stokes-Craven holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016)) (Subject to sanctions for filing a non-meritorious and baseless legal malpractice action against the attorneys and law firm that handled her federal anti-trust claims; client conducted no investigation of facts she would be required to prove to substantiate her claim, failed to develop any evidence that could satisfy her burden of proof at trial, and any reasonable attorney would conclude that her case was completely frivolous, and was brought and continued, for seven years without reasonable basis.).

Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.*

OPINIONS

I have been asked to provide my opinion as to whether or not the following filings violate the Act and/or Rule 11:

1. January 14, 2016 Statement of Creditor's Claims for Obituary Costs and for $3.1 million based upon a Prenuptial Agreement;
2. March 1, 2016 Petition for Adjudication as Surviving Spouse and For Amendment of Death Certificate;
3. March 9, 2016 Petition for Creditor's Claims on the Prenuptial Agreement and Obituary Costs;
4. April 29, 2016 Amended Petition regarding Surviving Spouse, Amendment of Death Certificate and Attorneys' Fees; and
5. May 25, 2016 Petition for Elective Share.

I address each below.

- The January 14, 2016 Statement of Creditor's Claims violates the Act and Rule 11.

On January 14, 2016, Deborah Harwell filed two frivolous Statements of Creditor's Claim based on a prenuptial agreement and based on obituary costs. At the time of the filing, Ms. Harwell was acting in bad faith, implementing a strategy of harassment and delay which included the instant filing. It cannot be disputed that the January Statement of Creditor's Claims are without merit and part of a larger plan. Consider:

1. On July 21, 2015, a Mediated Agreement ("Agreement") was approved by Order of the Family Court and contained the following: "both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other." The Agreement and Order clearly preclude Ms. Harwell from filing these claims; See **Exhibit B**, Order with attached Agreement;

2. Prior to the Agreement, Ms. Harwell made a settlement offer that was rejected by the Deceased where she asked to be allowed to attend his funeral and be treated as the Deceased's wife. RP 166 (Tr. P. 15);

3. Her attorney at the mediation which led to the Agreement, and at the Family Court hearing approving the Agreement explained the terms of the Agreement to Ms. Harwell; RP 168-169 (Tr. 18-19);

4. Ms. Harwell asked for approval of the mediated agreement;

5. Ms. Harwell executed a notarized Affidavit of Non Appearance seeking approval of the mediated agreement;

6. Ms. Harwell was represented by counsel at the time the mediated agreement was reached and also approved by the Family Court; and

7. The frivolous January 14, 2016 filings were part of Ms. Harwell's scheme to harass, embarrass and hurt the Estate of David Harwell and its Personal Representative. The scheme included not only the frivolous filing but also her intentional failure to comply with the Agreement and willful violation of the Family Court Order. The Family Court held Ms. Harwell in contempt for her actions and found "[Ms. Harwell] has willfully and intentionally violated this

Court's Order in a number of specific regards. She has done so in a flagrant manner that was **designed to cause significant misery to the family of the Decedent** herein, and continues to do so." See **Exhibit C**; July 20, 2015 Contempt Order at p. 14 (emphasis added). The scheme included bad acts regarding:

a. The income tax return; See **Exhibit C** at p. 8-9;

b. Appearing at the hospital and funeral home; See **Exhibit C** at p. 9-10;

c. Refusing to release cellphone numbers and reporting the cellphone stolen; See **Exhibit C** at p. 11;

d. Attempting to steal mail from the Decedent; See **Exhibit C** at p. 11;

e. Contacting the Decedent's financial planner; and,

f. Attempting to gain information regarding the Decedent's IRA account.

Respectfully, filing Petitions that are precluded by prior Court Order and Agreement is frivolous under the Act and violates Rule 11. There is no reasonable reading of fact or law that could support the Petitions. The filing of the Petitions in combination with Ms. Harwell's other actions demonstrate a clear pattern of harassment and delay meant to injure the Estate and Personal Representative. It is clear that Ms. Harwell's filing of frivolous petitions was to effect a "shake down" of the Estate and the Personal Representative.

- The March 1, 2016 Petition for Adjudication as Surviving Spouse and For Amendment of Death Certificate and its April 29th Amendment contain frivolous, harassing, and improper allegations.

Both the original and Amended Petition contain spurious allegations that have no basis in fact. The numbered allegations are:

16. In providing information required on the Death Certificate as to the surviving spouse's name, Respondent Harwell stated the surviving spouse's name as "NA" despite having full and complete knowledge of the identity of Mrs. Harwell as the Decedent's surviving spouse and despite having full and complete knowledge that the surviving spouse's name was not "NA".

* * *

18. Further, S.C. Code Section 44-63-161(B) provides that "a person who violates... item [44-63-161(A) (2) ... is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years, or both." S.C. Code §44-63-161(B).

19. Respondent Harwell, individually, knowingly and willfully supplied false information in the preparation of the Decedent's Death Certificate in violation of S.C. Code Section 44-63-161(A)(2).

21. Respondent Harwell, either individually or as Personal Representative of the Decedent's estate, should be ordered to correct the Decedent's Death Certificate to include Ms. Harwell as the Decedent's surviving spouse on said Death Certificate since she willfully and knowingly provided the false statement about the surviving spouse's name intending the false information to be used in the preparation of the Death Certificate.

The above statements of felonious conduct were not made upon information and belief. Rather, the statements were set forth as fact.

The record is clear that the statements are false. The only document pertaining to the Death Certificate that was signed by the Personal Representative was a South Carolina Certificate of Death Worksheet. See **Exhibit D** RP 1087. The Worksheet is accurate and includes Ms. Harwell's name as surviving spouse and "married but separated." The worksheet is signed by the Personal Representative. There is no competent information that would lead any reasonable attorney or person to make the above statements of felonious conduct.

The available facts at the time of filing of the Original Petition on March 1, 2016:

1. Ms. Edmonds was retained at the end of January beginning of February; TR 29 RP 180
2. Ms. Edmonds read the Family Court Order; RP 183 TR 32,
3. Ms. Edmonds had the Death Certificate, and
4. Ms. Edmonds had access to S.C. Code Ann. § 44-63-74 which sets forth that the funeral home director and not the Personal Representative communicates with DHEC as to the Death Certificate.

Based on these four pieces of information, Ms. Edmonds made the frivolous and false conclusion that a felony occurred. Ms. Edmonds' conclusion was frivolous because by statutory mandate, the Funeral Home communicates with DHEC, not the Personal Representative.

In order to substantiate her statements of felonious conduct, Ms. Edmonds would have had to speak directly with the Funeral Home which she did not. Ms. Edmonds was

not under the constraints of a deadline to conduct the necessary investigation to conclude that any error that occurred in the Death Certificate was between the Funeral Home and DHEC. No reasonable attorney would plead that the Personal Representative committed a felony based on the above statements of facts. Rather, a reasonable attorney would inquire as to the Funeral Home and to the Personal Representative. If both parties were unwilling to discuss the matter then a simple allegation of either negligence or a declaratory judgment action as to the accuracy of the death certificate should have been filed. There is no reasonable basis or need to make the incorrect statement of fact that Ms. Edmonds made.

Even more concerning is that shortly after the filing of the Petition, Ms. Edmonds was presented with information that proved that any error that occurred happened either at DHEC or the Funeral Home. Ms. Edmonds was provided the Affidavit of Sandy Dowling attaching the only DHEC form signed by the Personal Representative which was accurate in all respects and includes Ms. Harwell as the surviving spouse but "married but separated." Furthermore, Ms. Edmonds admits that shortly after the filing of the frivolous Petition that she had all the information necessary to conclude that the Personal Representative did not provide information directly to DHEC. *See* Affidavit of Edmonds. Any issue that Ms. Harwell had regarding the death certificate was between DHEC or the Funeral Home not the Personal Representative. Despite this knowledge, Ms. Edmonds Amended the Petition in April and once again included the frivolous and false allegations. No reasonable attorney would have left the allegations in the Petition.

- March 9, 2016 Petition for Creditor's Claims on the Prenuptial Agreement and Obituary Costs and Obituary Costs was frivolous because they were precluded by prior Court Order

Both Petitions for Creditor's claims are frivolous for the same reason that the original Statement of Creditor's claims are frivolous. On July 21, 2015, a Mediated Agreement ("Agreement") was approved by Order of the Family Court and contained the following: "both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other."

Ms. Edmonds admits that she had the Order in her hands at the time of the filing. Ms. Edmonds admits that Ms. Harwell was not entitled to any money from the Estate. Tr. at p.37 RP 188. A cursory reading of the Agreement and Order preclude Ms. Edmonds' filing. Ms. Edmonds attempts to excuse her conduct by stating that her actions were due to deadline constraints. However, Ms. Edmonds had options including: to (1) not participate in a frivolous pleading, (2) advise the client that the filing was frivolous and allow her to proceed forward pro se with forms that are similar to the ones that Ms. Harwell had filed in January, (3) file the petitions and immediately move to withdraw, or (4) file the petitions and immediately file the appropriate motion in Family Court to undo the Family Court Order (i.e. file a Rule 59 or 60 motion). Ms. Edmonds fell below the reasonable attorney standard when she chose to file the forms and simply continue forward.

- May 25, 2016 Petition for Elective Share

Ms. Harwell filed a frivolous petition for elective share on May 15, 2016. The petition had to fail because of the July 21, 2015 Family Court Order approving the Mediated Agreement and incorporating the mediated agreement into the Order. The Order (and Agreement) provides: "both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other." The Agreement and Order preclude Ms. Harwell's filing and as a result were frivolous.

MITIGATING FACTORS

Section E of the South Carolina Frivolous Civil Proceedings Sanctions Act sets forth a non-exclusive list of factors for a Court to consider prior to awarding sanctions and includes:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

As it pertains to each of the Petitions, there is nothing complex regarding the claims and defenses. Each Petition for allowance of a claim or elective is barred by a prior Family Court Order. As it pertains to the changing of the death certificate, there is nothing complex about waiting to make a statement of fact regarding criminal activity until after you investigated the claim. I am unaware of previous violations of the Act, however, I am aware of prior violations of the Family Court Order that resulted in a finding of contempt. Finally, I have reviewed the testimony of Ms. Harwell and the testimony and affidavit of

Ms. Edmonds attempting to explain their conduct. Their explanations are specious and frivolous in and of themselves. Even after they were confronted with overwhelming facts and law that precluded their actions, both Ms. Edmonds and Ms. Harwell continued filing and advocating positions that had no merit. The imposition of sanctions under both the Act and Rule 11 are warranted and should be granted.

FURTHER AFFIANT SAYETH NAUGHT.

Peter D. Protopapas

SWORN TO and subscribed before me

this 19 day of JAN, 2017

Jo-Elaine Boyd

Notary Public for South Carolina

My Commission Expires:

JO-ELAINE BOYD NOTARY PUBLIC MY COMMISSION EXPIRES 10/16/2018 SOUTH CAROLINA

EXHIBIT

tabbies

A

EXHIBIT A to Affidavit of Peter Protopapas

BATES NO	DATE	DESCRIPTION
RP 1-12	7/21/2015	Final Decree, Support Information Sheet, and Mediation Agreement 2015-DR-26-691
RP 18-19	2/11/2016	Order and Rule to Show Cause 2015-DR-26-691
RP 23-146	2/8/2016	Complaint for Contempt and Other Relief with Exhibits 1-16 2015-DR-26-691
RP 147-151	4/11/16	Debbie Harwell's Answer to Complaint for Contempt and Other Relief 2015-DR-26-691
RP 152-415	5/19/2016	Contempt Hearing Transcript 2015-DR-26-961
RP 430-431	5/26/2016	Debbie Harwell letter to OmniCare
RP 435-450	7/20/2016	Contempt Order 2015-DR-26-691
RP 471-476	8/1/2016	Motion for Reconsideration and for New Trial by Defendant 2015-DR-26-961
RP 478-480	8/29/2016	Supplemental Motion to Reconsider 2015-DR-26-961
RP 536-591	9/14/2016	Motion to Reconsider Hearing Transcript 2015-DR-26-961
RP 594-618	9/21/2016	Order Denying Motion to Reconsider 2015-DR-26-961
RP 621-622	3/9/2016	Summons and Petition for Allowance of Creditor Claim (3.1 million) 2015-ES-21-00778
RP 622-623	3/8/2016	Petition for Allowance of Creditor Claim 3.1 million 2015-ES-21-00778
RP 628-629	3/9/2016	Summons & Petition for Creditor Claim $1,457.25 2015-ES-21-0078
RP 637-651	3/1/16	Summons & Petition for adjudication as surviving spouse and amendment of death certificate with Exhibits A-C 2015-ES-21-00778
RP 668-672	3/1/2016	Motion for Recusal with Exhibit A 2015-ES-21-00778
RP 681-682	3/10/2016	Affidavit of Sandy Dowling 2015-ES-21-00778

EXHIBIT A to Affidavit of Peter Protopapas

RP 683-749		3rd Party Summons & Answers and Counterclaims and Third Party Claims with Exhibits 1-4 2015-ES-21-00778
RP 754-757	3/31/2016	Motion to Dismiss PR Claims 2015-ES-21-0078
RP 758-761	3/31/2016	Motion for Jury Trial on Respondents' Counterclaims and Claims and Removal to the Florence Circuit Court Pursuant to 62-1-302(d) AND 62-1-302(d)(5) with Respondents' supporting memorandum 2015-ES-21-0078
RP 766	4/5/2016	Amended Third Party Summons, Answers and Counterclaims and Third Party Claims with Exhibits A-C 2015-ES-21-0078
RP 822-823	4/21/2016	DHEC's Answer 2015-ES-21-0078
RP 824-839	4/28/2016	Summons and Amended Petition for adjudication as surviving spouse and amendment of death certificate with Exhibits A-C 2015-ES-21-0078
RP 840-844	6/6/2016	Petitioner's Reply to Counterclaims 2015-ES-21-0078
RP 845-847	6/10/2016	Order of Removal to Florence Co. Circuit Court 2015-ES-21-0078
RP 848-856	6/15/2016	Cert of Return to Circuit Court 2015-ES-21-0078
RP 857-885	6/17/2016	Petitioner's Reply to Counterclaims 2015-ES-21-0078
RP 866-889	6/22/2016	Answers and Counterclaims to Petition for Elective Share with Exhibit A 2015-ES-21-0078
RP 889-896	7/29/2016	Memorandum in Opposition to Motions to Dismiss 2015-ES-21-0078
RP 940	6/17/2016	Notice of Transfer of Case to Florence County Common Pleas 2016-ES-07-00302
RP 953-974	7/15/2016	Third-Party Defendants Law Office of Deirdre Memorandum in Support of Motion to Dismiss with Exhibit A Affidavit of Deirdre Edmonds 2016-CP-21-1435
RP 975-987	7/18/2016	Third-Party Defendants Law Office of Deirdre Edmonds Memorandum in Opposition to Motion for Sanctions with Exhibit A - Affidavit of Deirdre Edmonds 2016-ES-07-00302

EXHIBIT A to Affidavit of Peter Protopapas

RP 988		Death Certification
RP 989-994	10/12/2015	Petition for Formal Appointment 2015-ES_21-00778
RP 997		Certificate of Death
RP 1087		South Carolina Certificate of Death Worksheet
RP 1000-1001		Death Certification / Certificate of Death
RP 1002-1003	5/19/16	Transcript of Ms. Harwell testimony pg. 119 2015-DR-26-691
RP 1004-1012	7/21/2016	Petitioner's Return to Respondent's Motions to Dismiss, for Judgment on the Pleadings, and for Sanctions 2016-CP-21-1435
RP 1013-1034	7/21/2016	Respondent's Memorandum Support of Motions to Dismiss 2016-CP-21-1435
RP 1035-1039	8/3/2016	Respondent's Reply to Petitioner's Return to Motion to Dismiss 2016-CP-21-1435
RP 1047-1048	8/29/2016	Partial Stipulation of Dismissal 2016-CP-21-1435
RP 1049-1053	10/25/16	Stipulations of Parties 2016-CP-21-1435
RP 1054-1056	3/10/16	Stoudenmire Dowling Funeral Home Affidavit of Sandy Dowling 2015-ES-21-00778
RP 1057-1063	3/11/16 - 4/4/16	Correspondence between Barth & Edmonds re settlement
RP 1064-1069	7/18/16	Edmonds Memorandum in Opposition to Motion for Sanctions with Affidavit of Deirdre Edmonds 2016-CP-21-1435
RP 1087		South Carolina Certificate of Death Worksheet
RP 1124		Marriage Certificate

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE Deborah B. Harwell, Plaintiff, v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell; and South Carolina Department of Health and Environmental Control, Division of Vital Records, Defendants, v. Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually, Third-party Defendants.	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO. 2016-CP-21-01435 **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ROBERT BRYAN HARWELL'S MOTION FOR SANCTIONS UNDER RULE 11 AND SCFCPA**

This Memorandum is being submitted by Robert Bryan Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, in support of his Motions for Sanctions against Deborah B. Harwell, Deirdre W. Edmonds, P.A., and Deirdre W. Edmonds individually under SCRPC Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann., Section 15-36-10, et.seq. This Memorandum incorporates in its entirety of the Memorandum previously filed by Harwell on this same issue.

For purposes of this Motion, this matter was initially commenced by Deborah B. Harwell with the filing of four separate lawsuits against the Estate of David W. Harwell, and Robert Bryan Harwell, as PR of the Estate and against him individually. The four lawsuits claim entitlement to monies from the Estate of David W. Harwell by virtue of a purported "elective share" as the surviving spouse of David W. Harwell, for $3,100,000.00 based upon a "prenuptial agreement" signed by David and Deborah prior to their marriage, for $1,440.00 for funds spent by Deborah Harwell in publishing an obituary after the death of David W. Harwell, and lastly for

the amendment of the Death Certificate issued by DHEC to show Deborah Harwell as the surviving spouse of David Harwell and attorney's fees and costs.

The elective share Petition and the original claims for $3,100,000.00 and for reimbursement for the obituary were originally filed by Deborah Harwell pro se. Subsequently, Deirdre Edmonds, as attorney for Deborah Harwell, filed pleadings under Edmonds' signature for the $3,100,000.00 "pre nuptial agreement" claim, the obituary reimbursement claim and the Petition for Amendment of the Death Certificate and an award of attorney's fees and costs. In the pleadings requesting the amendment of the DHEC Death Certificate, Edmonds makes inaccurate and incorrect scandalous allegations against R. Bryan Harwell individually, claiming that he intentionally committed a felony by providing DHEC with false information regarding Deborah Harwell's marital status at the time of Judge Harwell's death. Edmonds made these allegations without having ever contacting the funeral home, whose statutory obligation is to provide DHEC with the information necessary to have the Death Certificate issued. Additionally, when Edmonds was provided a copy of the only document signed by R. Bryan Harwell (which included complete and correct information), Edmonds refused to withdraw the pleadings or the allegations of felonious conduct.

We contend that all of the claims were frivolous from the outset and that they never should have been filed. First of all, Deborah B. Harwell executed a mediated family court settlement agreement that was approved by the Family Court in July of 2015 at the request of David and Deborah Harwell. The Court approved agreement provided clearly that each party waived any right either may have to file claims against the estate of the other party. This Order was neither appealed nor modified at the time any of the claims were filed.[1][2]

In spite of this clear waiver, Deborah B. Harwell individually and by and through her attorney Edmonds, filed these claims seeking monies from the Estate of David W. Harwell. Both Edmonds and Deborah Harwell admitted in testimony under oath that both knew of the existence of the Family Court Order prior to filing these claims and pursuing them. Additionally, the pro se Petition for an Elective Share filed by Deborah Harwell was filed AFTER hearing the testimony of her retained attorney, Edmonds, wherein Edmonds indicated that Deborah Harwell would not

[1] A Motion to Set Aside the Order and Court Approved Agreement was filed by Deborah Harwell much later, but that Motion was voluntarily dismissed by her attorney Desa Ballard.
[2] A Timeline of the relevant actions and filings in this matter is attached hereto as Exhibit A

HB

be entitled to receive any monetary funds from the Estate of David W. Harwell. (Sworn testimony of Deirdre Edmonds is attached hereto as Exhibit B.)

Because of the filing of these frivolous claims, R Bryan Harwell retained the services of the undersigned and Gena P. Ervin to represent them in these matters. To date, not including attorney's fees and related costs for this sanctions hearing, Harwell and the Estate of David W. Harwell have incurred $35,258.49 in attorney's fees and litigation costs associated solely with the issues surrounding these claims. He and the Estate have also incurred fees and costs associated with the hiring of an expert witness, Peter Protopapas.

R. Bryan Harwell is requesting sanctions against Deborah Harwell and her then attorney Deirdre Edmonds pursuant to the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann., Section 15-36-10, et. seq., and pursuant to S.C.R.C.P., Rule 11. S.C. Code Ann. § 15–36–10(A)(4)(a)–(c) (Supp.2015) provides as follows:

> An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:
> (a) filing a frivolous pleading, motion, or document if:
> (i) the person has not read the frivolous pleading, motion, or document;
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
> (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
> (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or
> (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C.R.C.P., Rule 11(a) provides as follows:

> Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address. ..... The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper;

WB

that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

R. Bryan Harwell contends that he and the Estate are entitled to recover sanctions from both Edmonds and Deborah Harwell under both provisions. Deborah Harwell has now filed four claims against the Estate after asking the Family Court to approve an agreement wherein she waived such an interest. Additionally, she filed the fourth claim for an "elective share" after hearing her attorney testify under oath that she was not entitled to receive any funds from the estate based upon that Family Court Order (See Transcript of Edmonds' testimony, Exhibit B, page 37). Clearly, her claims are frivolous in light of her waiver of any interest in the Estate and her subsequent attempt to obtain millions of dollars from it. We would direct the Court to page 13 of Judge Buckhannon's Contempt Order wherein this issue is discussed in detail and the frivolity of these claims is noted.

As to Edmonds, R. Bryan Harwell and the Estate seek sanctions for two reasons. First, she signed and filed claims for $3,100,000.00 and $1,485.00 knowing and admitting under oath that her client was not entitled to receive any money from Judge Harwell's estate. Secondly, she accused the PR, personally and as PR, of committing a felony without investigating the matter at all and without speaking with anyone involved in the matter. (See South Carolina Certificate of Death Worksheet attached hereto as Exhibit C, and sworn testimony of funeral director Dowling attached hereto as Exhibit D) She then compounds the misconduct by amending the pleading to request an award of attorney's fees and costs from the estate.

The Supreme Court dealt with this issue in *Ex Parte Gregory*, 378 S.C. 430663 S.E.2d 46 (2008), in affirming a sanctions award of attorney's fees of nearly $30,000.00. In *Gregory*, the attorney filed an action for conversion against another attorney based solely on the allegations made by the client and without conducting an investigation into the claim itself. In fact, "Appellant testified he did not contact respondent because he thought if respondent would not respond to his clients or the North Carolina attorney, then he would not respond to him. He also felt it was unnecessary to contact respondent because he expected Disciplinary Counsel to take care of it. Appellant stated he did not get respondent's file because he did not think he would learn anything from it." *Ex parte Gregory*, 378 S.C. 430, 436, 663 S.E.2d 46, 50 (2008). The Court further noted as follows:

> We find that while an attorney or a *pro se* litigant does not have a duty to consult with a potential defendant prior to filing suit, before alleging conversion against an attorney for misappropriation of client funds or legal malpractice, a reasonable investigation is necessary.
> The above facts support the lower court's conclusions that appellant failed to properly investigate the matter prior to filing it, and that the action was frivolous. *See Father v. South Carolina Dep't of Soc. Servs., supra* (a party who makes a frivolous claim has committed a more egregious act than one who merely acts without substantial justification). *Gregory* at p. 439.

Basically, the attorney in Gregory did nothing except file a lawsuit based on the allegations of the client solely. The same is true here. Edmonds alleged that R. Bryan Harwell committed a felony by intentionally providing false information to DHEC without any investigation whatsoever, and after reading the Family Court Order in which her client (Deborah Harwell) had waived any claim against Judge Harwell's Estate. She did not contact Bryan Harwell to find out what documents he provided to the funeral home, nor did she contact the funeral home to see what documents were prepared and sent to DHEC. Attorney Gregory accused an attorney of "stealing money" without conducting an investigation, and Attorney Edmonds has accused R. Bryan Harwell of committing a felony without conducting one.

The Petition filed by Edmonds requesting amendment of David W. Harwell's death certificate (which was not prohibited by the Family Court Order), but the body of the pleadings made defamatory, disparaging, and wrongful allegations against R. Bryan Harwell (accusing him of being guilty of a felony by willfully providing false information in the preparation of the death certificate), such disparaging statements being specifically prohibited by the Family Court Order and unnecessary to the request for amendment of the death certificate.

These allegations were false, in that R. Bryan Harwell had in fact given the funeral home, both orally and in writing, Deborah Boggs's name[3] as is more fully explained in the family court hearing transcript and exhibits and documentation provided by the funeral home director as well as his testimony and his brother's testimony, in that transcript. Bryan Harwell's only contact was with the funeral home and giving them the relevant information. The funeral home dealt with DHEC, not Harwell. The funeral home received the death certificate copies from DHEC and provided them to him as the Personal Representative of the Estate of David W. Harwell.

[3] The DHEC form that the PR filled out and signed at the funeral home requested the surviving spouse's maiden name (Exhibit C). This was the only document signed by the PR that would be the subject of the claim for amendment.

KB

It was only after the last hearing before Judge Couch in late July 2016 where the attorneys for all parties able to talk to DHEC representatives about whether the certificate actually needed to be corrected or not. DHEC had not previously responded to the Estate's attorneys' phone calls and subpoena trying to determine if a correction was even needed, or what DHEC's protocol was in this type of situation.

Clearly, the funeral home had been given the name of Deborah Boggs by the PR of the Estate orally and in writing, and the death certificate that was issued indicated "married but separated" but had "N/A" underneath "surviving spouse."

In the last hearing, in Ms. Edmonds' filings in opposition to sanctions, Ms. Wagner indicated it was inexplicable why up to that point R. Bryan Harwell had objected to the death certificate being amended. She attached page 119 of the transcript but for some reason neglected to include pages 120 and 122 which was the full response. The entire testimony indicated that he first asked the funeral home if the Death Certificate was accurate or needed to be corrected. Bryan Harwell further explained at page 122 that a correction had not been made because neither he nor his attorneys knew whether a correction was even necessary because no one knew what DHEC's protocol was for a "married but separated" situation and whether it is normal for DHEC to put "N/A" under "surviving spouse" in such a situation. (See sworn testimony of R. Bryan Harwell attached hereto as Exhibit E.)

The PR's position in this litigation has always been that the Death Certificate could be amended if that was DHEC's protocol. To this date, it is unclear if DHEC's protocol followed the South Carolina Probate Code's definition of "surviving spouse," which we learned after these suits were filed indicated Mrs. Harwell was not a "surviving spouse" for purposes of SC Probate Code.

Please note that one of Edmonds' reasons for filing the claim for amendment (See Edmonds' Affidavit, attached hereto as Exhibit F page 2, paragraph 4) was to allow Mrs. Harwell to receive benefits due to her. However, Mrs. Harwell testified at the family court hearing that she had never been denied any benefits and had received all benefits due her. This testimony directly contradicts the sworn testimony/Affidavit of Deirdre Edmonds.

Additionally, regardless of the reasons for filing the claim made by Edmonds, it is crystal clear that no lawsuit for such an amendment needed to be filed at all. S.C. Reg. 61-19, Section 30, provides as follows:

> **Correction of obvious errors**, transpositions of letters in words of common knowledge, or omissions **on certificates may be made by the State Registrar within the first year** after the date of birth or date of death either upon his or her own observation or query or **upon the request of a parent or legal guardian in the case of a birth certificate, or, the informant or funeral director in the case of a death certificate.** (emphasis added)

In other words, to correct the "obvious error" as alleged by Edmonds[4], instead of filing a lawsuit against R. Bryan Harwell for the amendment and instead of alleging that he intentionally committed a felony by withholding information from DHEC, the only thing Edmonds or Ms. Harwell had to do was contact DHEC directly and provide them with information allowing DHEC to correct the error, if in fact, there was an error. Alternatively, either Edmonds or Ms. Harwell could have contacted either the informant (R. Bryan Harwell) or the funeral director (Samuel Dowling) and request that the death certificate be modified. It is respectfully submitted that if Edmonds is the "Probate expert" she holds herself out to be, she should have known about this Regulation and should have complied with it, instead of filing an inflammatory and unfounded lawsuit.

Respectfully, it appears clear that Deborah Harwell filed claims for money against the Estate of David W. Harwell, by and with the assistance of her Probate lawyer, Deirdre Edmonds, with full and complete knowledge that such claims were barred by the Family Court's Order of July 21, 2015. Deborah Harwell filed a subsequent claim for an elective share of the Estate, again with the same knowledge of the prior Court's Order. Lastly, Edmonds filed a Petition to Amend Judge Harwell's Death Certificate, which included allegations that she knew or should have known were simply not true.

Rule 11 and SCFCPA were both designed to prevent lawyers and litigants from filing these kinds of claims, and an award of sanctions is the only remedy that will prevent them from being filed. R. Bryan Harwell and the Estate of David W. Harwell are requesting an award to include reimbursement for all attorney's fees and costs incurred in this matter, as well as reimbursement for the money spent on their expert witness.

Respectfully submitted.

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[4] The allegation of "this obvious error and omission" is included in the Affidavit of Deidre Edmonds dated July 15, 2016, paragraph 18

Barth, Ballenger & Lewis, LLP

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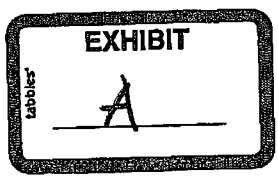
January 27, 2017

LITIGATION TIMELINE

- 7/17/15 Mediation Agreement signed
- 7/21/15 Order Approving Agreement filed
- 9/30/15 Death of Judge David Harwell
- 1/14/16 Statement of Creditor's Claim (pre-nup & obit) filed by Debbie
- 2/11/16 Family Ct Rule to Show Cause filed by Kevin Barth
- 3/2/16 Edmonds notifies lawyer that she will be representing Debbie in Probate Court
- 3/1/16 Petition for adjudication as surviving spouse and for amendment of death certificate filed by Deirdre Edmonds
- 3/3/6 TC b/t Kevin & Deirdre Edmonds regarding family court matter
- 3/9/16 Petitions for Creditor's Claims (pre-nup & obit) re-filed by Edmonds
- 3/10/16 Pleadings served on Bryan Harwell
- 3/11/16 Letter from Kevin to Deirdre Edmonds regarding her Petitions and allegations of misconduct by Bryan Harwell
- 3/11/16 Edmonds acknowledges receipt of DHEC form from KMB
- 3/16/16 KMB sends follow up email to Edmonds explaining funeral home forms and DHEC forms. Asks again about dropping claims
- 3/23/16 Edmonds serves subpoena on DHEC for their file
- 3/23/16 Edmonds sends letter to KMB rejecting offer and indicating "good grounds to support the claims and the relief she seeks"



- 4/1/16 Respondent's Motions to Dismiss Probate Court Petitions, Motions for Sanctions and Motions for Jury Trial (re: Petition for creditor claims, surviving spouse and amend death cert.)
- 4/1/16 Respondent's Answer/CC/Third Party claims
- 4/12/16 Dawes Cooks notifies KMB of his representation of Edmonds
- 4/28/16 Amended Petition signed by Edmonds (we don't have a filed copy)
- 5/3/16 Adam Silvernail notifies KMB that Edmonds will be withdrawing as counsel in Probate matters and he will take over
- 5/4/16 Motions to Substitute Counsel on behalf of Debbie Harwell
- 5/6/15 Third Party Defendants' Motion to Dismiss
- 5/16/16 Respondent's Answer/CC/Third Party Claims to Edmonds' Amended Petition
- 5/16/16 Respondent's Renewed Motions to Dismiss, Motions for Sanctions and for Jury Trial
- 5/20/16 Family Court Contempt Hearing (Day 1). Attorneys Julaan Derrick and Deirdre Edmonds both testify
- 5/20/16 Edmonds Renewed Motion to Dismiss
- 5/25/16 Petition for Elective Share filed by Debbie Harwell Pro Se
- 5/26/16 Debbie files Rule 60 Motion to Set Aside Family Court Order
- 5/27/16 Order Substituting Counsel (Adam Silvernail substituted for Edmonds)
- 6/6/16 Petitioner's Reply to Counterclaims filed by Silvernail (re: Creditor's claims)
- 6/10/16 Order of Removal to Florence County Circuit Court (Probate Case)

- 6/17/16 Petitioner's Reply to Counterclaims filed by Silvernail (re: surviving spouse and amend death cert.)
- 6/17/16 Day 2 of Family Court contempt hearing
- 6/22/16 Answer and Counterclaim to Petition for Elective Share
- 6/22/16 Respondent's Motion to Dismiss and for Jury Trial (re: Petition for Elective Share)
- 7/1/16 Respondent's Motion to Dismiss Third Party Defendant Edmonds filed by Dawes Cooke
- 7/18/16 Edmonds' Memo in Opposition to Motion for Sanctions
- 7/18/16 Edmonds' Memo in Support of Motion to Dismiss Third Party Claim
- 7/20/16 Judge Buckhannon files Contempt Order
- 7/21/16 Memorandum of Respondent Bryan Harwell
- 7/21/16 Petitioner's Returns to Motions to Dismiss (filed by Silvernail)
- 7/21/16 Hearing on Motions to Dismiss, etc. (Judge Couch)
- 7/29/16 Petitioner's Memo in Opposition of Motions to Dismiss
- 8/3/16 Respondent's Reply Memorandum
- 8/16/16 Order Substituting Counsel (Desa Ballard)
- 8/31/16 Debbie (through Desa) files Partial Stipulation of Dismissal. Elective Share dismissed with prejudice. Other claims (except modifying Death Certificate) dismissed without prejudice
- 10/25/16 Stipulations (dismissing all claims without prejudice against everyone, except Rule 11 Sanctions and Frivilous Proceedings claims)

STATE OF SOUTH CAROLINA	)	**IN THE FAMILY COURT**
COUNTY OF HORRY	)	**2015-DR-26-691**
David W. Harwell by and through his personal representative, Bryan Harwell,	)	
Plaintiff,	)	**Transcript of Record**
vs.	)	
	)	**May 19, 2016**
Deborah B. Harwell,	)	
Defendant.	)	

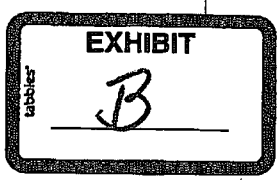
B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter



1 **THE COURT:** Thank you, ma'am, have a seat there.
2 **MS. WAGNER:** Your Honor, I'm Barbara Wagner. I represent
3 Deidre Edmonds.
4 **THE COURT:** Alright, thank you. You can have a seat at
5 this table it you wish to be closer to your client and give
6 you a little room to work.
7 If you could state your full name for the record, please,
8 ma'am.
9 **MS. EDMONDS:** My full name is Deidre Wisenut Edmonds.
10 **THE COURT:** Thank you.
11 Counsel?
12 **MR. BARTH:** May it please the Court, Your Honor.
13 **THE COURT:** Yes, sir.
14 **DIRECT EXAMINATION OF MS. EDMONDS BY MR. BARTH:**
15 **Q:** Ms. Edmonds, what do you do for a living?
16 **A:** I'm an attorney.
17 **Q:** Okay and how long have you been practicing?
18 **A:** Well, I've been licensed to practice almost 29 years. I
19 did not practice for 12 of those years.
20 **Q:** Okay, you were a Probate Judge?
21 **A:** Yes, I was.
22 **Q:** Alright, and you've been back in private practice now how
23 long?
24 **A:** Almost a year and a half.
25 **Q:** Okay and you do what kind of work?

1 **A:** I do estate planning. I do probate administration,
2 probate litigation.
3 **Q:** Do you have experience in Family Court?
4 **A:** No, I don't.
5 **Q:** Sometimes in your handling probate matters do you have the
6 opportunity to review Family Court Orders?
7 **A:** Sometimes.
8 **Q:** Okay and that's something that you've done on a number of
9 occasions?
10 **A:** Both when I was on the bench and in practice on a few
11 occasions.
12 **Q:** Okay, do you feel like you're comfortable reading an Order
13 and understanding it -- what it means and what the terms mean?
14 **A:** Yes.
15 **Q:** And do you understand that a willful violation of a Court
16 Order can subject one to contempt?
17 **A:** Of course.
18 **Q:** Alright and you had the opportunity to represent Ms.
19 Harwell; did you not?
20 **A:** Mr. Barth, I still represent Ms. Harwell.
21 **Q:** I thought you had been substituted?
22 **A:** Your co-counsel objected to my substitution. I have not
23 been relieved by the Court.
24 **Q:** So you are technically still her lawyer?
25 **A:** Yes, I am.

1 **Q:** Alright.
2 **A:** Only in the probate matter.
3 **Q:** Right, you did not appear in the Family Court matter;
4 correct?
5 **A:** No.
6 **Q:** Alright, now do you remember about when Ms. Harwell
7 contacted you about the probate matter? If you don't that's
8 okay.
9 **A:** The end of January, first of February.
10 **Q:** Okay and what was it that she was asking you to do?
11 **THE COURT:** Of what year?
12 **MS. WAGNER:** Objection.
13 **THE COURT:** Of what year, '16?
14 **MS. EDMONDS:** Yes.
15 **THE COURT:** Okay.
16 Yes, ma'am?
17 **MS. WAGNER:** Objection, they're attempting to evade the
18 attorney/client privilege.
19 **MR. BARTH:** I can ask it this way.
20 **BY MR. BARTH:**
21 **Q:** What were -- what were you retained to do?
22 **MS. WAGNER:** Objection. Same objection.
23 **MR. BARTH:** I don't think that's attorney/client
24 privilege, Your Honor.
25 **THE COURT:** I don't think that's attorney/client

1 privilege if she's made a Notice of Appearance in a file she
2 can certainly testify as to if she's made a Notice of
3 Appearance in a Court file.
4 **BY MR. BARTH:**
5 **A:** I was retained to represent Ms. Harwell in probate
6 matters.
7 **Q:** And in that representation -- let me ask you this; what
8 was your fee arrangement with her?
9 **MS. WAGNER:** Objection.
10 **THE COURT:** Mr. Harwell (sic)?
11 **MR. BARTH:** It's relevant on the issue of attorney's fees
12 because we're asking for attorney fees. Her ability to pay
13 her lawyer back then and now is relevant, Your Honor.
14 **THE COURT:** I don't know if that can evade -- if that is
15 relevant enough in this action to evade the attorney fee
16 unless that was something filed with the Probate Court and
17 it's made part of the record I don't know if her fee agreement
18 can come in because she's not seeking fees in this case. So,
19 I'm going to sustain the objection.
20 **MR. BARTH:** Alright, thank you, Your Honor.
21 **BY MR. BARTH:**
22 **Q:** Take a look at this document; tell me if you've seen that
23 before.
24 **A:** Yes, I have.
25 **Q:** Okay, can you tell the Court what that is, please?

1 **A:** It's a Notice of Allowance/Disallowance of Claim.
2 **Q:** Okay and that's in regard to the estate of David Walker
3 Harwell?
4 **A:** Yes, it is.
5 **Q:** Okay and it is a Disallowance of Ms. Harwell's claims?
6 **A:** It's a disallowance of a claim.
7 **Q:** A claim. Alright, if you would take a look at what's
8 attached to it, please, ma'am; and see if that was provided to
9 you along with the Disallowance?
10 **MS. WAGNER:** Objection, Your Honor. This is
11 attorney/client work product privilege. Are you asking when
12 she was -- obtained this?
13 **BY MR. BARTH:**
14 **Q:** Were you provided this disallowance and attachment?
15 **A:** I was provided this.
16 **Q:** Okay and did you file any pleadings in response to this
17 disallowance?
18 **A:** Yes, I did.
19 **Q:** Okay and can you tell the Court what you filed?
20 **A:** I filed a Petition for Allowance of a Claim.
21 **Q:** Prior to filing the Petition for Allowance of Claim did
22 you have -- did you have the opportunity to read the Family
23 Court Order?
24 **MS. WAGNER:** Objection, Your Honor.
25 **THE COURT:** Ma'am?

1 **MS. WAGNER:** This is the work product privilege. This is
2 what she knew, or had seen, or thought about the Order.
3 **THE COURT:** I'm going to overrule your objection on that.
4 If she's filed something, all he asked her is have you read
5 the Family Court Order prior to filing it. I'm going to allow
6 her to answer that question. Overrule your objection on that
7 one.
8 **BY MR. BARTH:**
9 **Q:** When you filed with Summons and Petition had you read the
10 Family Court Order that approved the agreement?
11 **MS. EDMONDS:** May I voice an objection?
12 **THE COURT:** No, ma'am.
13 **MS. WAGNER:** Your Honor, I'm going to object ---
14 **THE COURT:** I've already overruled you. The question is:
15 Have you read the Family Court Order before you filed this?
16 That is not protected. He's asking a question. She filed
17 documentation with the Court and she's going to testify to it.
18 Answer the question.
19 **BY MR. BARTH:**
20 **A:** Yes, I did.
21 **Q:** Alright.
22 **Q:** That's the Disallowance with the Order attached?
23 **A:** Yes.
24 **MR. BARTH:** I'd move to introduce it, Your Honor.
25 **THE COURT:** Did you show it to Ms. Harwell?

1 **MR. BARTH:** I gave her one, Your Honor.
2 **THE COURT:** Any -- any evidentiary objection to this
3 document, Ms. Harwell?
4 **MS. HARWELL:** No.
5 **THE COURT:** Alright, plaintiff's exhibit two into
6 evidence without objection.
7 **(PLAINTIFF'S EXHIBIT NUMBER TWO IS**
8 **ADMITTED INTO EVIDENCE.)**
9 **BY MR. BARTH:**
10 **Q:** After being provided with the Disallowance and a copy of
11 the Order approving the Family Court agreement; is this the
12 Petition for Allowance you filed?
13 **A:** Yes.
14 **Q:** And can you tell the Court what the claim is for, money
15 wise? What are you asking for?
16 **A:** This is to preserve Ms. Harwell's claim that she filed in
17 the Probate Court.
18 **Q:** Yes, ma'am. That you signed; correct?
19 **A:** I signed this Petition, yes.
20 **Q:** Alright and what does the Petition ask for in the way of
21 money?
22 **A:** Three million one hundred thousand dollars.
23 **Q:** Alright and what does the Petition that you signed show as
24 the basis for the $3.1 million dollar request?
25 **A:** Prenuptial agreement.

1 Q: Okay. At the time that you sited this -- I'll move to
2 introduce this first.
3 **THE COURT**: Any evidentiary objection to that, Ms.
4 Harwell? To this document?
5 **MS. WAGNER**: I have an objection. These documents aren't
6 relevant to the Rule to Show Cause that's before the Court
7 today. All of the actions that Mr. Barth alleges in his Rule
8 to Show Cause occurred before Ms. Edmonds was hired by Ms.
9 Harwell.
10 **THE COURT**: One, that sounds awful close to an objection.
11 No, stand back up for me; I'm talking to you. That sounds
12 awful like an objection on behalf of Ms. Harwell. This is a
13 court document that filed; it's part of public record. Part
14 of the allegations he is alleging is the inappropriateness or
15 her possible violation by interfering into the probate matter.
16 I find it more than relevant so I'm going to overrule your
17 objection. Ms. Harwell had no objection. I don't know if you
18 have standing to object to a piece of evidence coming in in
19 this matter but if you do I'm overruling it and so plaintiff's
20 exhibit three into evidence without objection from plaintiff
21 or defendant.
22 **(PLAINTIFF'S EXHIBIT NUMBER THREE IS**
23 **ADMITTED INTO EVIDENCE.)**
24 **MR. BARTH**: Thank you, Your Honor.
25 **BY MR. BARTH**:

1 **Q:** Did you also file another Summons and Petition on Ms.
2 Harwell's behalf?
3 **A:** I did.
4 **Q:** And is this a copy of it?
5 **A:** Yes.
6 **Q:** Okay and what are you asking for in those pleadings on
7 behalf of Ms. Harwell?
8 **A:** I am asking for Ms. Harwell to be declared the surviving
9 spouse of David Walker Harwell and for the decedent's death
10 certificate to be amended to include the surviving spouse,
11 Debbie Harwell, on the death certificate.
12 **Q:** Alright, thank you, and you filed this again after having
13 read the Family Court Order approving the agreement? These
14 Petitions were filed together; weren't they?
15 **A:** No, they weren't.
16 **Q:** Oh they weren't. When was this one file?
17 **A:** This was filed on March 1st.
18 **Q:** Okay, had you read the Family Court Order by then?
19 **A:** I believe I had.
20 **Q:** Okay.
21 **MR. BARTH:** I'd move to introduce this, Your Honor.
22 **THE COURT:** And objection, Ms. Harwell?
23 **MS. HARWELL:** I guess I object because I don't think
24 that's true. I don't think that you had been retained by that
25 time.

1 **THE COURT:** Do you want to show her the document?
2 **MR. BARTH:** She has one, Your Honor. I just gave her one.
3 **THE COURT:** Alright, look at the -- do you have an
4 evidentiary objection to this document? She has -- the
5 witness has authenticated it, state's she filed it on your
6 behalf, gave the date of filing. Do you have an evidentiary
7 objection to it being made an exhibit?
8 **MS. HARWELL:** No, you can make it an exhibit.
9 **THE COURT:** Alright, plaintiff's exhibit three into
10 evidence without objection -- exhibit four, I apologize.
11 **(PLAINTIFF'S EXHIBIT NUMBER FOUR IS**
12 **ADMITTED INTO EVIDENCE.)**
13 **BY MR. BARTH:**
14 **Q:** At the time you filed that particular Petition to be
15 adjudicated the surviving spouse were you familiar with the
16 probate definition of a surviving spouse?
17 **A:** Yes.
18 **Q:** Okay and is a surviving spouse -- a quote "surviving
19 spouse" under the probate code if all of their property rights
20 have been tended to by a Court Order? If all of the issues
21 involved in their marriage other than the marriage itself, all
22 of the property and debts have been disposed of by prior Court
23 Order is she a surviving spouse under the statute?
24 **A:** There is a definition in the probate code for a surviving
25 spouse and the defined term if all of the property rights have

1 been settled the person is not a surviving spouse ---
2 **Q:** Okay.
3 **A:** --- but Ms. Harwell was Judge Harwell's surviving spouse
4 at his death.
5 **Q:** And how is that?
6 **A:** Because they were not divorced and there was not an
7 annulment of their marriage.
8 **Q:** Okay, in your opinion as a probate lawyer had all of their
9 marital business been tended to by prior Court Order? I mean,
10 all of their assets and debts had been divided by a Court
11 approved agreement.
12 **A:** She is still a surviving spouse under law.
13 **Q:** Okay.
14 **A:** Not for purposes of any property rights through the
15 probate code.
16 **Q:** Okay so this Summons and Petition as I understand it, and
17 correct me if I'm wrong, asking that she be adjudicated the
18 surviving spouse would not entitle her to any money or
19 anything from the estate?
20 **A:** No, sir. That was for purposes of the Court finding she
21 was the surviving spouse so she could be included on the death
22 certificate.
23 **Q:** Okay. And you filed a third claim on her behalf?
24 **A:** No, I did not.
25 **Q:** I would like for you to look at it, please. Would you

1 mind looking at that and telling me what it is?
2 **A:** This is a Petition, it is not a claim.
3 **Q:** Okay, what's the difference?
4 **A:** Ms. Harwell ---
5 **Q:** Is she asking for money from the estate?
6 **A:** It is a Petition for Allowance.
7 **Q:** She wants money from the estate; right?
8 **A:** Yes.
9 **Q:** Okay and can you tell the Court what that claim was for or
10 what the Petition was for?
11 **A:** It was for the obituary she published in the newspapers.
12 **Q:** Obituary she published; correct?
13 **A:** That's my understanding.
14 **Q:** Alright.
15 **MR. BARTH:** I'd move to introduce that, Your Honor.
16 **THE COURT:** Any objection, Ms. Harwell?
17 **MS. HARWELL:** No objection.
18 **THE COURT:** Alright, plaintiff's exhibit five into
19 evidence without objection.
20 **(PLAINTIFF'S EXHIBIT NUMBER FIVE IS**
21 **ADMITTED INTO EVIDENCE.)**
22 **BY MR. BARTH:**
23 **Q:** Do you know whether or not the estate authorized Ms.
24 Harwell to publish her own obituary for Judge Harwell?
25 **A:** I don't know whether they did or not.

1 **Q:** Does that make a difference?
2 **A:** Not to me.
3 **Q:** Okay and you filed an Amended Petition on May the 2nd on
4 behalf of Ms. Harwell; did you not?
5 **A:** I did.
6 **Q:** Okay and that asks for what?
7 **A:** Attorney's fees and costs.
8 **Q:** Okay, asks for attorney's fees and costs and reiterates
9 the request of being adjudicated the surviving spouse?
10 **A:** Yes.
11 **Q:** Yes, okay.
12 **MR. BARTH:** I'd move to introduce that, Your Honor.
13 **THE COURT:** Any objection, Ms. Harwell?
14 **MS. HARWELL:** Your Honor, I do object on this whole line
15 of questioning because there is another pending case in
16 Florence County and they're trying to try it right here
17 because it has the possibilities that ---
18 **THE COURT:** Is it in Probate Court?
19 **MS. HARWELL:** It is in -- let's see -- it is in Probate
20 Court.
21 **THE COURT:** Then they're not trying it here because I
22 can't make any decisions regarding probate.
23 **MS. HARWELL:** That's what this is.
24 **THE COURT:** No, it's not. I understand what it is. My
25 question is: Do you have any evidentiary objection to this

1 exhibit coming in? If you do state what your objection is.
2 **MS. HARWELL:** I think the exhibit is public information
3 so it may come in.
4 **THE COURT:** I agree, plaintiff's exhibit six into
5 evidence.
6 **(PLAINTIFF'S EXHIBIT NUMBER SIX IS**
7 **ADMITTED INTO EVIDENCE.)**
8 **BY MR. BARTH:**
9 **Q:** At the time you filed the first Petition for $3.1 million
10 dollars and signed your name to it as attorney of record, had
11 you looked at the Family Court Order that said she waived any
12 right she may have to Judge Harwell's estate?
13 **A:** Yes.
14 **Q:** And you filed it anyway?
15 **A:** Ms. Harwell filed these claims before I was retained.
16 **Q:** Yes, ma'am, and you signed pleadings on her behalf as her
17 attorney of record; correct?
18 **A:** I did.
19 **Q:** Which certifies that you as an attorney believe there's a
20 good faith basis and factor of law for the filing of that
21 claim; correct?
22 **A:** Yes.
23 **Q:** And what is it? What is the basis for the $3.1 million
24 dollars when you've already looked at the Court Order that
25 waived any right to collect any money from the estate?

1 **MS. WAGNER**: Objection, Your Honor. He's seeking her
2 attorney work product, her mental impressions.
3 **THE COURT**: He is not. She signed something, she
4 certified it, she put her name on. He's allowed to ask her,
5 overrule the objection.
6 **BY MR. BARTH**:
7 **A**: The basis for filing the Petition for Allowance of Claim -
8 --
9 **Q**: Yes, ma'am.
10 **A**: --- was that if Ms. Harwell did not respond to the Notice
11 of Disallowance within a certain time period her claims were
12 barred. In order to preserve her claims I filed a Petition
13 for Allowance on her behalf as she instructed me to do.
14 **Q**: Well, you understand Rule 11; right? You certify there's
15 a good faith basis and factor of law for any claim you file on
16 behalf of a client; you understand that?
17 **A**: Yes, sir.
18 **Q**: And I want to know what the basis was for you signing
19 pleadings asking for $3.1 million dollars from an estate where
20 your client has specifically waived an interest in the estate;
21 that's what I'm asking?
22 **A**: Ms. Harwell felt that she had been ---
23 **MS. HARWELL**: Your Honor, is that not privileged
24 information between attorney/client?
25 **THE COURT**: No, ma'am, because you didn't tell her what

1 the -- I mean, he's not asking for the discussion between the
2 two of you so no it's no privileged.
3 **BY MR. BARTH:**
4 **A:** And my response is based on my communications with my
5 client.
6 **Q:** I understand.
7 **THE COURT:** And you can't argue the objection either, Ms.
8 Edmonds.
9 **MR. BARTH:** If I didn't move yet to introduce that Amended
10 Petition I move it at this time.
11 **THE COURT:** You did.
12 **MR. BARTH:** I did?
13 **THE COURT:** The Amended Petition is exhibit six.
14 **MR. BARTH:** Okay, thank you, Your Honor.
15 **THE COURT:** But I get the point, Mr. Barth. Let's move
16 on.
17 **MR. BARTH:** Okay.
18 **BY MR. BARTH:**
19 **Q:** And those claims are all still pending in a Probate Court
20 in Florence County?
21 **A:** Yes.
22 **Q:** Alright, thank you, ma'am. Answer any questions Ms.
23 Harwell might have for you.
24 **THE COURT:** Ms. Harwell, do you have any questions of
25 this witness?

1 **CROSS EXAMINATION OF MS. EDMONDS BY MS. HARWELL:**
2 **Q:** Ms. Edmonds, do you feel like -- you're involved in
3 another case; correct?
4 **A:** Yes, I am.
5 **Q:** Have you been sued by Kevin Barth and Bryan Harwell as the
6 executor of my husband's estate?
7 **A:** Yes.
8 **Q:** Did you find any evidence whatsoever that Deborah Boggs
9 Harwell is not the surviving spouse of David Harwell?
10 **A:** No.
11 **Q:** Did you investigate additional possibilities with the
12 department -- with DHEC supporting your thoughts?
13 **A:** Yes.
14 **Q:** And so the first objection was requested to get the wife's
15 name left off of the death certificate put on the death
16 certificate; correct?
17 **A:** Yes.
18 **Q:** If someone would have intentionally left the information
19 off or altered the information on the death certificate what
20 consequences would that have been to someone?
21 **MR. BARTH:** Object. I don't think that's relevant.
22 **THE COURT:** I'm going to allow ---
23 **MS. HARWELL:** It's why we're here today.
24 **THE COURT:** I overruled the objection.
25 **BY MS. HARWELL:**

1 **A:** It is a violation of law to provide false information for
2 a death certificate.
3 **Q:** Punishable by what?
4 **A:** I don't recall the punishment.
5 **Q:** A misdemeanor?
6 **A:** I believe it's a felony.
7 **Q:** Felony. When you preserved the ability to appeal in the
8 probate case did you think you were doing anything wrong?
9 **A:** No, I was trying to protect my client.
10 **MS. HARWELL:** That's all for right now, thank you.
11 **THE COURT:** Any redirect?
12 **MR. BARTH:** Just a couple, Your Honor.
13 **REDIRECT BY MR. BARTH:**
14 **Q:** They just asked you about any investigation you did prior
15 to filing the claim. Call it what it is, you've accused Bryan
16 of committing a felony; right? That's what your pleadings do;
17 right?
18 **A:** Yes.
19 **Q:** Alright and can you tell the Court what investigation you
20 did prior to accusing him ---
21 **MS. HARWELL:** You Honor, I totally object. We're in
22 Court in another Court in Florence ---
23 **THE COURT:** Ms. Harwell, you opened the door. You asked
24 her a question, you got an answer from her, he gets to come
25 back and ask her and expound on what you open the door on.

1 **MS. HARWELL:** Okay, thank you.
2 **THE COURT:** Overruled.
3 **BY MR. BARTH:**
4 **Q:** What investigation did you do?
5 **A:** I contacted the Department of Health and Environmental
6 Control.
7 **Q:** Okay. Were you given a copy of that?
8 **A:** I was given a copy of this by you, Mr. Barth.
9 **Q:** And that's a document signed by Bryan Harwell listing your
10 client, Ms. Harwell, as the surviving spouse married but
11 separated; correct?
12 **A:** Yes, this is a worksheet you gave me.
13 **Q:** Okay.
14 **A:** After I filed my Petition.
15 **Q:** Alright and after you had this and the death certificate
16 and had the opportunity to talk to the people at DHEC and look
17 at their file you reiterated in an Amended Petition after that
18 that he committed a felony; didn't you?
19 **A:** Yes.
20 **Q:** Did you also have an affidavit from the funeral home
21 saying that Bryan had filled out a sheet and that they
22 submitted it to DHEC as they do in every case? You had that
23 didn't you?
24 **A:** I had an affidavit but I don't think it's referenced the
25 attached worksheet.

1 **Q:** What evidence do you have that Bryan has committed a
2 felony because you've reiterated it twice and I want to --
3 what investigation did you do that has lead you to believe
4 Bryan Harwell's committed a felony?
5 **MS. HARWELL:** Your Honor, I object to that. I -- this is
6 a very serious thing and I don't think that it should be tried
7 without preparation and particularly without the files.
8 **THE COURT:** Ms. Harwell, I will remind you, your last
9 question of her is: Did you think you did anything wrong?
10 Her attorney did not object to that question. She answered
11 it. You opened the door, I'm going have to let him go through
12 it. I overrule your objection.
13 **BY MR. BARTH:**
14 **Q:** Ma'am?
15 **A:** I'm sorry, what was your question again?
16 **Q:** What evidence did you come up with in your investigation
17 that led you to believe that Bryan Harwell committed a felony
18 as you allege in two different Petitions?
19 **A:** I had information that Mr. Harwell was the informant on
20 the death certificate and had not provided Ms. Harwell's name
21 as a surviving spouse.
22 **Q:** And you had seen that sheet that said otherwise before you
23 filed your Amended Petition hadn't you because I gave it to
24 you?
25 **A:** I had seen that sheet. I had also subpoenaed the records

1 from DHEC ---
2 **Q:** Okay.
3 **A:** --- and from the certifying physician and their records
4 did not conform to what you had provided me from the funeral
5 home.
6 **Q:** Okay, so you think there's some other forms out there?
7 **A:** DHEC's records did not match what the funeral home said
8 they submitted to DHEC.
9 **Q:** Are you talking about the certificate of death?
10 **A:** I'm talking about the form that you said was attached to
11 the affidavit from the funeral home ---
12 **Q:** Okay.
13 **A:** --- was not the record that DHEC received from the funeral
14 home.
15 **Q:** And that claim is still pending in Probate Court as well;
16 isn't it?
17 **A:** Yes.
18 **Q:** Alright, thank you, ma'am.
19 **THE COURT:** Ms. Harwell, any recross?
20 **MS. HARWELL:** No, ma'am.
21 **THE COURT:** Thank you. Any objection to having --
22 allowing this witness to be excused from the courtroom?
23 **MR. BARTH:** No, Your Honor.
24 **THE COURT:** Ms. Harwell?
25 **MS. HARWELL:** What was the question?

1 **THE COURT:** Any objection to this witness being excused
2 from the courtroom?
3 **MS. HARWELL:** I'd like for her to remain in the
4 courtroom, please.
5 **THE COURT:** Okay, it's up to her. She's not under your
6 subpoena so if she wishes to leave I will allow her to leave.
7 Who are you calling next?
8 **MR. BARTH:** Tom Gasser, Your Honor, Postal Inspector.
9 **THE COURT:** Spell that last name for me?
10 **MR. BARTH:** G-A-S-S-E-R.
11 **THE COURT:** Thank you.
12 Sir, you see that bible there on the rail. If you could
13 put your left hand on it for me -- right over there in the
14 front -- bible -- left hand -- raise your right.
15 **MR. GASSER, HAVING BEEN FIRST**
16 **DULY SWORN, TESTIFIED AS FOLLOWS:**
17 **THE COURT:** Thank you so much. Have a seat there and if
18 you could state your full name for the record once you get
19 situated.
20 **MR. GASSER:** Thomas Gasser.
21 **THE COURT:** Thank you.
22 **MR. BARTH:** May it please the Court, Your Honor?
23 **THE COURT:** Yes, sir.
24 **DIRECT EXAMNATION OF MR. GASSER BY MR. BARTH:**
25 **Q:** Mr. Gasser, who do you work for?

STATE OF SOUTH CAROLINA)	**IN THE FAMILY COURT**
COUNTY OF HORRY)	**2015-DR-26-691**
David W. Harwell by and through his personal representative, Bryan Harwell,	
Plaintiff,	**Transcript of Record**
vs.	**June 16, 2016**
Deborah B. Harwell,	
Defendant.	

B E F O R E:

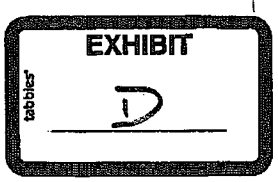
Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant

Sallie Beth Todd
Family Court Reporter



1 **DIRECT EXAMINATION OF MR. DOWLING BY MR. BARTH:**
2 **Q:** Mr. Dowling, give us your full name and occupation,
3 please.
4 **A:** Samuel Gardner Dowling, I am an associate director of
5 Stoudenmire Dowling Funeral Home.
6 **Q:** Where is that?
7 **A:** Florence.
8 **Q:** Alright and can you tell me how long you've been in the
9 funeral business?
10 **A:** I actually started working part-time when I was in high
11 school so most of my life.
12 **Q:** Most of your life. Alright, and Stoudenmire Dowling is
13 the funeral home that handled Judge Harwell's --
14 **A:** That's correct.
15 **Q:** -- funeral arrangements?
16 **A:** That's correct.
17 **Q:** Alright, now in your business as a funeral director, do
18 you keep records in the ordinary course of your business?
19 **A:** Absolutely.
20 **Q:** To memorialize what -- what the arrangements are?
21 **A:** Yes.
22 **Q:** Can you take a look at that set of documents and tell me
23 whether or not those are true and correct copies of the
24 documents in your file?
25 **A:** Everything here is copies of what we have in our file.

1 **Q:** Okay and there's some other stuff about financial
2 arrangements and all of that that doesn't apply to this.
3 **A:** Right.
4 **Q:** Those are the documents that have relevance --
5 **A:** Correct.
6 **Q:** -- to this?
7 **A:** Yes, sir.
8 **MR. BARTH:** I'd move to introduce that, Your Honor.
9 **THE COURT:** Any objection, Mr. Welsh?
10 **MR. WELSH:** No, ma'am.
11 **THE COURT:** Alright, that would be plaintiff's exhibit 23
12 into evidence without objection.
13 **(PLAINTIFF'S EXHIBIT NUMBER TWENTY THREE IS**
14 **ADMITTED INTO EVIDENCE.)**
15 **BY MR. BARTH:**
16 **Q:** Sammy, will you take a look at that document; and I'd like
17 you to start, if you would, at the -- at the back of it.
18 **MR. BARTH:** Judge, I've got one for you to write on if
19 you need to.
20 **BY MR. BARTH:**
21 **Q:** What is that document?
22 **A:** I'm assuming you're talking about the fax coversheet -- oh
23 no, the very last thing.
24 **Q:** The very last one.
25 **A:** That is -- it's called an abstracted of the death

1 certificate.
2 **Q:** Alright, and can you just tell us in general what that is,
3 please?
4 **A:** When we gather the information from the family to document
5 on the death certificate we have to enter it in the abstract
6 form to e-mail to DHEC.
7 **Q:** Okay and does that have to be done under the statute
8 electronically?
9 **A:** Yes, yes.
10 **Q:** Alright, is that what this document is?
11 **A:** That's a copy of what is actually e-mailed through to DHEC
12 and everything on here -- you will notice over on the left
13 hand side you will see my initials.
14 **Q:** Yes, sir.
15 **A:** That is saying that I have looked at this, matched it with
16 the death certificate worksheet, which is also in here, that a
17 family member has to sign off on --
18 **Q:** Okay.
19 **A:** -- to verify that all of that information is correct.
20 That means that once we transfer it to the abstract I'm
21 confirming that all of that information is the same as on the
22 worksheet.
23 **Q:** Alright and if you would look at the top margin where it
24 says items one to 23; who completes that portion of the form?
25 **A:** The funeral home.

1 **Q:** Alright, that'd be you guys?
2 **A:** Yes, sir.
3 **Q:** Alright and is there a spot on there for surviving spouse?
4 **A:** There is.
5 **Q:** And that's blank number 10; right?
6 **A:** Uh-huh. (Affirmative response)
7 **Q:** Can you tell me whose name is listed on that?
8 **A:** Deborah Boggs.
9 **Q:** Okay and you got that information from where?
10 **A:** From Bryan.
11 **Q:** Alright, now I'd like to flip up one page, please. You
12 referenced a worksheet, you see that?
13 **A:** Uh-huh. (Affirmative response)
14 **Q:** Alright and is that document signed by anybody?
15 **A:** R. Bryan Harwell.
16 **Q:** Alright and dated what?
17 **A:** September 30th, 2015.
18 **Q:** Alright, would you tell me whether or not this document
19 lists a surviving spouse?
20 **A:** Deborah Boggs --
21 **Q:** Alright.
22 **A:** -- as maiden name.
23 **Q:** Alright, now there is a block number nine that says
24 marital status and then there's a block 55 at the bottom that
25 references the kind of business he was in.

1 **A:** Correct.
2 **Q:** Alright, block number nine, if you would, tell me what
3 block is checked?
4 **A:** Originally, married.
5 **Q:** Okay.
6 **A:** We realized that the actual legal status was married but
7 legally separated and we made a correction, faxed it into DHEC
8 --
9 **Q:** Okay.
10 **A:** -- and had the correction made.
11 **Q:** Okay, on this one that was first done you had his business
12 as judicial and his status as married; correct?
13 **A:** Correct.
14 **Q:** Alright and you tell me that that was a mistake and it was
15 corrected.
16 **A:** Uh-huh. (Affirmative response)
17 **Q:** What document would we look at to see where that was
18 corrected?
19 **A:** The same basic document it'll also have Bryan's signature
20 on it.
21 **Q:** Okay, is that part of this file?
22 **A:** Yes, sir.
23 **Q:** Alright and, if you would, turn to that one and tell us if
24 Bryan signed it?
25 **A:** He did.

1 **Q:** Was that done the same day?
2 **A:** The same day.
3 **Q:** Alright, block number nine, marital status. You corrected
4 it to say what?
5 **A:** Married but separated.
6 **Q:** Alright and did it also list a surviving spouse?
7 **A:** Deborah Boggs.
8 **Q:** Alright and it changed block 55 from judicial to what?
9 **A:** Legal.
10 **Q:** Okay, now are there any other documents that would be used
11 to go to DHEC that Bryan would have signed?
12 **A:** Not that he would have signed, the only other document --
13 and this is an internal document for us, the first document on
14 that stack that you handed me is a death certificate release
15 form. That's where Bryan picked up the certified copies that
16 we had ordered for them.
17 **Q:** Okay.
18 **A:** And he signed off saying that he had received those
19 copies. That's the only other signature that we have.
20 **Q:** Well, other than signing the bottom of the worksheet, is
21 there anything that Bryan would do under the statute that
22 would give information directly to DHEC?
23 **A:** No.
24 **Q:** Would he have any other reason or method to contact DHEC?
25 **A:** No.

1 **Q:** Alright, all this stuff about ordering death certificates
2 and sending in the doctor's certification and things like
3 that; that's done by whom?
4 **A:** Funeral home.
5 **Q:** Done by you guys?
6 **A:** Uh-huh. (Affirmative response)
7 **Q:** And did y'all do that in this case?
8 **A:** We did.
9 **Q:** Alright and a death certificate was issued that says
10 marital status, married but separated and surviving spouse's
11 name is N/A. Did Bryan sign any worksheet or did you fill out
12 any worksheet that had N/A where the surviving spouse was?
13 **A:** No.
14 **Q:** Do you have any idea why DHEC does it that way?
15 **A:** I have no idea.
16 **Q:** Okay, is there any other way for you to send the stuff to
17 DHEC other than married but separate and listing the surviving
18 spouse's name?
19 **A:** No.
20 **Q:** I want to direct you to, if you would, an e-mail that's in
21 your file. Do you see that?
22 **A:** Is this it?
23 **Q:** Yes -- no, sir, next page. I think it's an e-mail dated
24 September the 3rd.
25 **A:** I'm just looking through what you handed me. I don't find

1 it.
2 Q: It should be in here.
3 **MR. WELSH:** Your Honor, I'm Johnny come lately to this
4 but what's the relevance of this to what we're doing here
5 today?
6 **THE COURT:** Mr. Barth?
7 **MR. BARTH:** Ma'am.
8 **THE COURT:** I'll let you respond to -- he's asking to the
9 relevance of this information.
10 **MR. BARTH:** The relevance of the information is one of
11 our allegations is that she's violated the Court Order by
12 making disparaging comments about Judge Harwell or the family;
13 and one of the disparaging comments is that he's intentionally
14 and willfully committed a felony by giving false information
15 to DHEC and that's what this addresses.
16 **THE COURT:** That was part of her -- during the first part
17 of the trial, and I know you are coming in late --
18 **MR. WELSH:** And I apologize for that.
19 **THE COURT:** -- That's fine. She made a great deal about
20 the fact and accused the personal representative of purposely
21 leaving her off of information, purposely not including her as
22 a surviving spouse, even made allegations that he had broken
23 the law by not listing her, falsely reporting his marital
24 status. So, I guess that is --
25 **MR. WELSH:** But how does this Court have jurisdiction

1 today?
2 **THE COURT:** One of the -- the Family Court Order is --
3 and I'm assuming this is -- the Family Court Order included a
4 very broad restraining order by agreement of the parties; that
5 the restraining order required both of them to -- for no
6 harassing contact -- no contact, no coming about, no calling,
7 no harassing of either of the parties, including no
8 disparaging remarks or making any comments about the family.
9 **MR. WELSH:** All of that would've died with the deceased.
10 **THE COURT:** Not necessarily because the Family Court
11 Order as it extends -- for example, if the Family Court Order
12 doesn't just die with the deceased that's why we can still do
13 equitable division once the deceased is gone. We can still do
14 still follow the terms if the terms apply to things that are
15 not directly involved, such as, if she were to pass away
16 alimony would terminate if she were awarded alimony but if she
17 were to pass away prior to him her estate would still receive
18 whatever property division.
19 **MR. WELSH:** Oh, I understand about the property and I
20 think in their jurisdictional paragraph they talk about the
21 tax refund but everything else -- as I understand it
22 everything other than equitable division especially -- you
23 know, died with the -- one of the spouses.
24 **THE COURT:** Mr. Barth?
25 **MR. BARTH:** That's not the case. That's not the case

1 law and it can be --
2 **MR. WELSH:** Well, I'm saying --
3 **MR. BARTH:** -- she can be held in contempt for violating
4 the Court Order on and on depending on what it is and one of
5 the allegations is she's interfering with Judge Harwell's
6 estate. That doesn't die with him. She can still be held in
7 contempt for that because that's exactly what the agreement
8 addresses.
9 **MR. WELSH:** Maybe so but not in this Court, I don't
10 think.
11 **THE COURT:** Who else would enforce the Family Court
12 Order, Mr. Welsh?
13 **MR. WELSH:** Well, if it's an estate matter I'm sure
14 there's something going on -- I've heard talk about probate
15 attorneys and things going on. There's something going on in
16 Florence, something going on in Beaufort. I mean, there are
17 actions going on in other Courts involving the estate.
18 **MR. BARTH:** That does not affect this Court's authority
19 to enforce a Family Court Order and that is what we're asking
20 Your Honor to do.
21 **MR. WELSH:** I think it does. I mean, that doesn't
22 necessarily, some of that stuff is exclusive --
23 **THE COURT:** What other Court could enforce a Family Court
24 Order if she has violated it?
25 **MR. WELSH:** Well, the problem is any kind of -- I don't

1 mean it to -- it's just what I remembered when I practiced in
2 Family Court. The case law says everything but the possible
3 equitable division dies with the spouse. It's personal to the
4 spouse and including contempt. In fact, I'm sure one of the
5 cases they had a contempt proceeding pending at the time of
6 death and it -- Supreme Court said that's gone.
7 **THE COURT**: You got the case law to back that up?
8 **MR. WELSH**: I'll find it. I mean, I really don't care of
9 they want to go into that. I just didn't understand the
10 reason for it.
11 **THE COURT**: Well, normally -- and I will tell you, this
12 is a very different type of Order. They worked it out through
13 mediation. They both signed the agreement at mediation and
14 brought it before the Court, the Court approved the Order. I
15 mean approved the agreement and made it part of the Court
16 Order. The parties, and it's very common in Family Court, the
17 parties can bind themselves to something that the Court would
18 never order. They can bind themselves to things that the
19 Court would never consider equitable to order, would never
20 feel like it was an appropriate order and one of those things,
21 I would point out, that these people agreed to that is not
22 something that the Court would normally do -- I don't think
23 I've ever done it on a permanent basis myself -- is they
24 agreed that there would be a restraint that they would have --
25 that there would be no harassment of each other and further no

1 disparaging remarks about the other's family. Now, that's
2 something that the Court would not ordinarily order but it was
3 something that the parties bound themselves to. So, it didn't
4 say and that dies upon the death -- ends upon the death of it.
5 I don't know but if that's what there allegations they're
6 making you can certainly come back with her testimony but it's
7 a Family Court Order and the only Court that can enforce the
8 Family Court Order in this regard would be the Family Court.
9 **MR. WELSH:** Well, with all due respect, I don't know that
10 the Family Court can -- in this particular circumstance, but I
11 -- I -- if they want to go through and put this on the record
12 I'm not going to tell Mr. Barth how to try his case.
13 **THE COURT:** So, are you withdrawing your objection?
14 **MR. WELSH:** I'll withdraw my objection.
15 **THE COURT:** Alright, thank you.
16 **MR. BARTH:** May it please the Court, Your Honor?
17 **THE COURT:** Yes, sir.
18 **BY MR. BARTH:**
19 **Q:** I'm going to show you this e-mail. It may not be in the
20 one I handed you but --
21 **A:** I found it.
22 **Q:** Alright, do you see an e-mail from Ms. Harwell --
23 **A:** I do.
24 **Q:** -- from September the 30th? Who is that addressed to?
25 **A:** To our e-mail address.

1 **Q:** It belongs to the funeral home?
2 **A:** Yes, sir.
3 **Q:** Alright and can you read that for us, please?
4 **A:** It says, "I am David Harwell's wife. I ask that you
5 include me as his wife in the obit. This is a sad situation
6 but I do insist on being included. We were together for more
7 than 18 wonderful years."
8 **Q:** Alright and did she also leave a message with the funeral
9 home's answering service a week or two later?
10 **A:** She did. It was actually taken on October the 1st.
11 **Q:** Oh, October 1st. Alright, tell me what her complaint was
12 at that point.
13 **A:** There was apparently someone had posted a negative posting
14 -- our website has what's called a tribute wall where people
15 can go in and sign an online register book basically.
16 **Q:** Okay.
17 **A:** Someone apparently had said something unseemly about their
18 relationship. As soon as we got the message we went online
19 and removed the negative comments.
20 **Q:** Okay. This is a separate document from what's in your
21 file. Can you identify those two documents for me, please?
22 **A:** They both look to be certified copies of the death
23 certificate but one of them is unusual.
24 **Q:** Okay, one of them has the doctor's notes on it?
25 **A:** Yes.

1 **Q:** Okay and the other one is the death certificate?
2 **A:** Uh-huh. (Affirmative response)
3 **Q:** Alright, now you showed us earlier an electronic
4 transmission form where you fill out the top. Who fills out
5 the second section?
6 **A:** The doctor.
7 **Q:** Alright and is that what you have in your hand?
8 **A:** My left hand, yes.
9 **Q:** Alright and as a result of those documents coming in a
10 death certificate is generated?
11 **A:** Correct.
12 **Q:** Is that what's in your right hand?
13 **A:** No, the one that's in my right hand was all electronically
14 -- electronic I should say.
15 **Q:** Okay.
16 **A:** The doctor's part was done on the computer.
17 **Q:** Who does that?
18 **A:** DHEC.
19 **Q:** DHEC does that?
20 **A:** Uh-huh. (Affirmative response)
21 **Q:** Is that anything that Bryan would communicate with them
22 about?
23 **A:** No.
24 **Q:** Where would they get that information?
25 **A:** We submit that information to them electronically.

1 **Q:** And that's the electronic document that's generated?
2 **A:** Yes.
3 **Q:** Thank you.
4 **MR. BARTH:** I'd move to introduce these, Your Honor.
5 **THE COURT:** Any objection, Mr. Welsh.
6 **MR. WELSH:** No objection.
7 **THE COURT:** Alright, plaintiff's exhibit 24 into evidence
8 without objection.
9 **(PLAINTIFF'S EXHIBIT NUMBER TWENTY FOUR IS**
10 **ADMITTED INTO EVIDENCE.)**
11 **BY MR. BARTH:**
12 **Q:** Again, this electronic death certificate says, "surviving
13 spouse N/A".
14 **A:** Correct.
15 **Q:** Any clue why it's that way?
16 **A:** Someone from DHEC would have to tell you.
17 **Q:** Okay.
18 **A:** You saw -- you saw our worksheet showing her name.
19 **Q:** Okay. Is there any document that you're aware of that
20 Bryan would have signed that did not disclose this lady as his
21 surviving spouse?
22 **A:** No.
23 **Q:** Alright, thank you, sir.
24 **MR. BARTH:** Bear with me one second, Your Honor.
25 **BY MR. BARTH:**

1 **Q:** Sammy, did the funeral home send the Family Court Order to
2 DHEC?
3 **A:** We did along with the correction on nine -- number nine.
4 **Q:** That went from married to married by separated?
5 **A:** Uh-huh. (Affirmative response)
6 **Q:** Why'd y'all do that?
7 **A:** To show that that was the actual legal status.
8 **Q:** Okay whose job is it under the statute to make sure that
9 the correct information is provided to DHEC?
10 **A:** Funeral home.
11 **Q:** Alright and when the funeral home realized that the wrong
12 block was checked that's when you sent the documents in the
13 corrected form?
14 **A:** Correct.
15 **Q:** Did Bryan have anything to do with correcting that
16 mistake?
17 **A:** Yeah, he signed off on the correction?
18 **Q:** Okay and that's all he did?
19 **A:** Yeah.
20 **Q:** And that also listed Debbie's name?
21 **A:** Correct.
22 **Q:** Thank you, sir.
23 **THE COURT:** Alright, Mr. Welsh, any questions?
24 **MR. WELSH:** I just -- I just have one question.
25 **CROSS EXAMINATION OF MR. DOWLING BY MR. WELSH:**

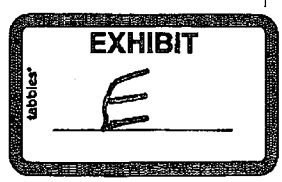
1 **Q:** Mr. Dowling, with your obvious expertise in this area can
2 you explain why her name hasn't been added?
3 **A:** It's a mystery to me in all honesty and I'll give you an
4 example. We send information in on the abstract death
5 certificate. We ask a lot of questions that we type in, level
6 of education; I'll use that for one. It never shows on the
7 certified death certificate. They use that information
8 internally but it does not print out on the death certificate.
9 Why her name is not on the certified copy, I cannot tell you.
10 I do not know.
11 **Q:** So, as early -- your testimony is as early as September
12 30th, 2015 that Mr. Harwell had made an effort to correct the
13 death certificate; is that correct?
14 **A:** Correct, yes, sir.
15 **Q:** And that would have been this document? I don't know what
16 number.
17 **A:** This is the corrected married but separated and there's
18 where he signed off on it.
19 **Q:** Okay and do you remember -- and that would have been
20 September 30th, 2015. Do you remember where it was signed?
21 **A:** In our conference room.
22 **Q:** In your conference room. Okay, thank you.
23 **MR. WELSH:** I have no further questions.
24 **THE COURT:** Thank you, any redirect?
25 **MR. BARTH:** I just have one question.

1 **REDIRECT EXAMINATION OF MR. DOWLING BY MR. BARTH:**
2 **Q:** Sammy, around that same time did Debbie show up at the
3 funeral home and make a scene?
4 **A:** I don't remember the exact day but she did show up. I was
5 actually down in Lake City marking a grave for another service
6 and they called and said she was there. I came straight back.
7 I called Bryan because he was handling things, told him she
8 was there. He told me to allow her to view the Judge as long
9 as I was there to make sure she didn't take pictures or
10 anything but I -- best I remember about 15 minutes is what she
11 spent there.
12 **Q:** Okay.
13 **A:** She waited for me a lot longer than that but as far as
14 being in the funeral home.
15 **Q:** Did she make any kind of threats?
16 **A:** Not directly to me.
17 **Q:** Okay. And then after you let her see Judge Harwell she
18 left?
19 **A:** Yes.
20 **Q:** Alright, thank you, sir.
21 **THE COURT:** Any redirect on that?
22 **MR. WELSH:** Well, just a couple.
23 **RECROSS EXAMINATION OF MR. DOWLNING BY MR. WELSH:**
24 **Q:** Mr. Dowling, her visit was categorized as a scene. Did
25 she make a scene?

1 **A:** Other than the fact, you know, she showed up unannounced
2 and she said she was not going to leave without seeing the
3 Judge. At that point in time I had instructions that she was
4 not to see him so we had to work that out. Bryan agreed to
5 let her view him and we gave her some time.
6 **Q:** Did she in fact ask for you to call the boys and have them
7 come over?
8 **A:** She didn't ask me because I wasn't there at the time but
9 she may have asked someone else and I just don't know that.
10 **Q:** Alright, so that's not something you can testify to?
11 **A:** No, sir.
12 **Q:** Okay, alright. No one in your staff mentioned the fact
13 that she called ahead to make sure it was okay?
14 **A:** No, sir.
15 **Q:** What about someone on her behalf?
16 **A:** No, sir. Not to my knowledge.
17 **Q:** Okay. Thank you.
18 **THE COURT:** Thank you, sir. You can have a seat -- is
19 there any objection to having this witness excused?
20 **MR. BARTH:** No, Your Honor, not from us.
21 **MR. WELSH:** No, there's none whatsoever.
22 **THE COURT:** Alright, thank you, sir. You can be excused.
23 **MR. DOWLING:** Thank you.
24 **THE COURT:** You can stay or you can leave the courtroom.
25 You're excused from the courthouse.

1 **MR. BARTH:** Let me get that exhibit from you, Sandy.
2 **THE COURT:** Uh oh. We'd have to track you down for that.
3 **MR. DOWLING:** Let's don't do that.
4 **MR. BARTH:** They'll hunt you down for that.
5 **THE COURT:** That's alright; we'd just send a deputy out
6 after you.
7 Alright, Mr. Barth, you've got another witness you said?
8 **MR. BARTH:** Yes, ma'am, Baxter Harwell.
9 **THE COURT:** Now, are you rehoeing the row you've already
10 done with his brother or has he got additional information?
11 **MR. HARWELL:** We've got five minutes worth of additional
12 information.
13 **THE COURT:** Alright, come forward. Not to say that I'm
14 limiting you to what you can ask your witness but I heard it
15 the first time. I took big notes.
16 **MR. BARTH:** No, I understand.
17 **MR. BAXTER HARWELL, HAVING BEEN FIRST**
18 **DULY SWORN, TESTIFIED AS FOLLOWS:**
19 **THE COURT:** Thank you. Have a seat there for me and once
20 you get situated if you could state your full name for the
21 record, please, sir.
22 **MR. HARWELL:** My name is William Baxter Harwell.
23 **THE COURT:** Thank you.
24 Counsel?
25 **MR. BARTH:** May it please the Court?

1 witness regarding those issues you need to ask those.
2 Anything he might have done to you, you didn't file a Rule to
3 Show Cause so that's not before me. I've allowed you some
4 latitude but you need to move on.
5 **BY MS. HARWELL:**
6 **Q:** In pertaining to the death certificate that is in this
7 paper that you filed; did you ask for the death certificate to
8 be altered?
9 **A:** No, ma'am. Let me tell you, I signed a form, a DHEC
10 worksheet form that gave your name -- it gave your name and it
11 said, I think Deborah Boggs, and it also said married but
12 separated. The form -- and I gave that to the funeral home.
13 I don't deal directly, and I did not deal directly with DHEC.
14 The original form, as I understand it, which Ms. Edmonds has
15 that Mr. Dowling submitted indicated your name and it said
16 married, instead of married but separated. The only change
17 that I know of is that they were changing married to married
18 but separated. I signed the correct information, gave that
19 information to the funeral home with my brother present. They
20 have always known you were married but separated and it's my
21 understanding that was passed on to DHEC.
22 **Q:** Did you see the death certificate when it came back?
23 **A:** I did and it said N/A under surviving spouse and I even
24 contacted -- when I got it from the funeral home because the
25 provided it to me. DHEC didn't send it to me. I don't



1 contact -- I didn't have any contact with DHEC. The funeral
2 home sent it to me and I asked them. I said, "this thing says
3 N/A is that correct"? Mr. Dowling's response was, "I guess
4 so". "If she's not happy" -- talking about you -- "If she's
5 not happy, she needs to take it up with the government".
6 That's my understanding but your name was provided.
7 **Q**: Is your testimony here in Court today that you never asked
8 for a change to be made on the death certificate after the
9 original one was put in?
10 **MR. BARTH**: Your Honor, I object. It's not relevant. I
11 don't know what that has to do with our allegations of content
12 against ---
13 **MR. HARWELL**: The only thing that ---
14 **THE COURT**: Mr. Harwell?
15 **MR. HARWELL**: Yes, ma'am.
16 **THE COURT**: Stop talking, please.
17 Ms. Harwell, what is the relevance of him changing the
18 death certificate to the Rule to Show Cause against you?
19 **MS. HARWELL**: Let me go pull the papers so I can see how
20 they listed it in their Rule to Show Cause.
21 **THE COURT**: Well, before you do that he's objected that
22 it's not relevant. What is your argument as to the relevancy
23 of that question?
24 **MS. HARWELL**: It this to you?
25 **THE COURT**: Yes.

1 **MS. HARWELL**: The relevance of it is that we're talking
2 about an agreement. An agreement cannot be conformed with
3 because they're standing in the way of the agreement through
4 different methods as a death certificate, can't apply for
5 retirement, can't -- can't do anything.
6 **THE COURT**: Mr. Barth, as you brought it out on your
7 testimony under Ms. Edmonds about the death certificate I'm
8 going to allow a brief ---
9 She asked you: Did you do anything after the original to
10 change the death certificate. Answer her question.
11 **BY MS. HARWELL**:
12 **Q**: What happened was Mr. Dowling, if you'll look at the form
13 -- I hadn't seen it until it was sent to Mr. Edmonds -- that
14 Mr. Dowling completed it indicated married up at the top.
15 That was supposed to be changed to married but separated to
16 reflect what was on the form that I gave them. They had your
17 name on that form and they had married but separated. The
18 correction, if there was any correction, was to be married but
19 separated. Now, I don't know what -- because I didn't deal
20 directly with DHEC.
21 **Q**: Are you aware that your responsibility as PR is that you
22 are the informant on the death certificate and you are the
23 only one that can apply for a change. No one else can do
24 that.
25 **A**: I'm not sure. I don't have the statute in front of me.

STATE OF SOUTH CAROLINA	)	**IN THE FLORENCE COUNTY CIRCUIT COURT**
COUNTY OF FLORENCE	)	**C/A NO.: 2016-CP-21-1435**
Deborah B. Harwell, **Petitioner,**	)	
vs.	)	
Robert B. Harwell, Individually and as Personal Representative of the Estate of David W. Harwell, **Respondents,**	)	**REBUTTAL AFFIDAVIT OF DEIRDRE W. EDMONDS ON BEHALF OF THIRD-PARTY DEFENDANTS, LAW OFFICE OF DEIRDRE W. EDMONDS, PA AND DEIRDRE W. EDMONDS, INDIVIDUALLY**
vs.	)	
Law Office of Deirdre W. Edmonds, PA and Deirdre W. Edmonds, Individually. **Third-Party Defendants.**	)	

FILED
2017 FEB -1 AM 4:14
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

PERSONALLY, APPEARED before me, Deirdre W. Edmonds, Esquire, who first being duly sworn deposes and says as follows:

1. Respondents have requested sanctions pursuant to Rule 11, South Carolina Rules of Civil Procedures ("SCRCP"), as well as under the South Carolina Frivolous Civil Proceedings Act ("SCFCPA"), SC Code § 15-36-10, *et seq.*

2. This Rebuttal Affidavit is being submitted in response to the Affidavit of Peter D. Protopapas and the Supplemental Memorandum in Support of Robert Bryan Harwell's Motion for Sanctions Under Rule 11 and the SCFCPA.

3. I incorporate herein by reference my original Affidavit of Third-Party Defendant Deirdre W. Edmonds dated July 15, 2016 that was previously filed with this Court on July 19, 2016.

4. I respectfully disagree with Mr. Protopapas' all-encompassing statements that "filing Petitions that are precluded by prior Court Order and Agreement is frivolous under the

Act and violates Rule 11" and "that there is no reasonable reading of fact or law that could support the Petitions." Aff. Peter Protopapas p. 9 (Jan. 20, 2017). Such all-encompassing statements preclude *any instance* whatsoever that a party to a court order and agreement, as was the case here, could pursue new claims that arise after the court order and agreement. That is simply not the case. South Carolina law allows parties to set aside such orders and agreements based on several situations, including newly discovered evidence, fraud and misrepresentation.

5. During my initial conferences with Mrs. Harwell, she advised me that she had received a great deal of information after the Order and Agreement that lead her to believe that Mr. Harwell had not fully disclosed his assets to her during their mediation conference and she testified to this information at the Family Court hearing. See Hrg. Transcr. 61:18-69:25 (June 16, 2016). **Exhibit A.**

6. When I was retained by Mrs. Harwell she provided me with this information and we discussed how she might proceed with the matter. Although I initially believed that Mrs. Harwell might be able to proceed in the Probate Court with regard to her claims of fraud and misrepresentation with regard to the Mediated Agreement, I later determined that she would need to seek to set aside the Family Court order and I advised her that she should retain a family court attorney for purposes of same. I am aware that Mrs. Harwell sought legal representation from numerous family court attorneys throughout this state before eventually filing, pro se, her Rule 60(b) Motion in the Family Court to set aside the Order based upon fraud and misrepresentation.

7. Deborah Harwell initially filed her creditor claims pro se in the Probate Court before I was retained. Subsequently, I filed the Petitions for Allowance of Claims to preserve any right that Mrs. Harwell might have with regards to such creditor claims. If Mrs. Harwell had failed to timely file her Petitions for Allowance of Claims after being notified by the Personal Representative of the Estate that her creditor claims were being disallowed, her creditor claims would have been barred by statute regardless of whether she was successful in setting aside the Family Court Order and Mediated Settlement in her Rule 60(b) Motion.

8. Based upon the information Mrs. Harwell received regarding David W. Harwell's assets following the Court Order and Mediated Agreement as she testified to at the Family Court hearing, Mrs. Harwell believed that there had been fraud and/or misrepresentations and a failure to disclose assets. Hrg. Transcr. 61:18-69:25 (June 16, 2016), Exhibit A. If Mrs. Harwell had failed to file her creditor claims within the statutory filing deadline for the filing of creditor

claims after a decedent's death, she would have been precluded from recovering on her claims. Once her creditor claims were disallowed by the estate's representative, she was required to act to preserve the claims or they would be barred. I reasonably believed that there was a good faith basis for preserving her creditor claims and, thus, filed the Petitions for Allowance of Claims on her behalf. Specifically, though I do not practice family law and I did not represent Mrs. Harwell in Family Court, I knew that under the law it was possible for Mrs. Harwell to obtain relief from the Family Court Order if she could prove fraud or misrepresentation concerning her husband's assets. I could not, consistent with my professional responsibility, allow her claim against the estate to become time-barred when there was no way for me to determine whether she might be entitled to recovery. I believed that my actions were reasonable under the circumstances and, based upon my knowledge, information and belief, there was good ground to support the filing of the Petitions for Allowance of Claims.

9. Mr. Protopapas also asserts that, with regard to the Petitions for Allowance of Claim, "a cursory reading of the [Mediated] Agreement and [Family Court] Order preclude [my] filings". Aff. Protopapas, p. 13. Based upon the information that Mrs. Harwell had received from third persons related to David W. Harwell's assets, there was some evidence that there had not been a full and fair disclosure during the mediation settlement. The Petitions for Allowance of Claims that I filed on Mrs. Harwell's behalf were filed in good faith based upon a reasonable belief that Mrs. Harwell had claims that she might recover in the Probate Court. They were not filed for harassment, delay or to simply injure the estate.

10. Regarding my testimony in the Family Court, both Respondent and Peter Protopapas misstate my testimony from the Family Court hearing on May 19, 2016 (Supplemental Memorandum in Support of Robert Bryan Harwell's Motion for Sanctions Under Rule 11 and SCFCPA, p. 4, referenced as Exhibit B, p. 37; Aff. Protopapas, p. 13). They both state that I testified that Deborah Harwell was not entitled to receive any funds from the estate. My testimony was in response to Mr. Barth's questions to me that were related solely to the Petition for Adjudication as Surviving Spouse. (Question Kevin Barth: "Okay so this Summons and Petition as I understand it, and correct me if I'm wrong, asking that she be adjudicated the surviving spouse would not entitled her to any money or anything from the estate?" Answer Deirdre Edmonds: "No, sir.") My response regarding the Petition for Adjudication as Surviving Spouse was that the purpose of that Petition was not for property rights but rather the purpose

was for the Court to find that Deborah Harwell was the surviving spouse so that she could be included on the death certificate. I was not commenting on whether Deborah Harwell was entitled to funds from the estate in general, as I had been asked by Mr. Barth specifically about the Petition for Adjudication and Amendment of the Death Certificate and my answer was related to that Petition alone. Hrg. Transcr. 36:14-37:22 (May 19, 2016). **Exhibit B.**

11. Mr. Protopapas asserts that there is no competent information that would lead any reasonable attorney or person to make the statements of felonious conduct against Respondent Harwell. Aff. Protopapas, p. 12. The information that I relied upon in making the allegation against Harwell are as follows:

(1) The Informant provides the information required on the death certificate for filing purposes. See Angelia Saleeby's Affidavit, which confirms this statement. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. C, filed July 19, 2016 and **Exhibit C.**

(2) Bryan Harwell was listed as the "Informant" on David W. Harwell's death certificate and it is undisputed that Bryan Harwell was well aware of his father's surviving spouse.

(3) An employee of DHEC refused to provide Deborah Harwell with a copy of David Harwell's death certificate because she was not listed as the surviving spouse and the DHEC employee told Deborah Harwell that Bryan Harwell, the Informant, was the person who left her name off the death certificate.

(4) Bryan Harwell filed a sworn Application for Probate and Appointment with the Florence County Probate Court in which he initially listed Deborah Harwell as David Harwell's surviving spouse but later her name was whited out on his Application as the decedent's surviving spouse. Aff. Deirdre Edmonds, Attachment B, filed July 19, 2016 and **Exhibit D**

(5) Bryan Harwell had actual knowledge in October 2015 that the surviving spouse's name had not been included on the death certificate yet in the almost five (5) months since the death certificate was issued before the filing of Deborah Harwell's Petition to amend the death certificate, the death certificate had not been amended to include Mrs. Harwell's name as the surviving spouse. See his testimony in Family Court

hearing Hrg. Transcr. 119:22-:25 (May 19, 2016). **Exhibit E**. Indeed, he continued, without any basis, to refuse to amend the death certificate even after I filed the Petition.

(6) I spoke to Angelia Saleeby, Director of Vital Statistics at DHEC, about the procedure for amending the death certificate and sought to have DHEC, in accordance with its regulations, R.61-19, amend the certificate based upon an obvious error on its face in that the death certificate stated that the decedent was "married but separated" but listed the surviving spouse's name as "N/A". DHEC refused to do so, and advised me that the death certificate could only be amended by submission of an affidavit by the Informant or a court order.

12. I submit that based upon the foregoing information that I discovered through my investigation of the facts before filing the Petition for Adjudication as Surviving Spouse, I had a good faith belief that Bryan Harwell willfully and knowingly failed to include Deborah Harwell as the decedent's surviving spouse on the death certificate. We also now know that Bryan Harwell failed to seek to correct the death certificate after he became aware of the omission of the surviving spouse's name on the death certificate, a state statistical vital record of his father that listed Bryan Harwell as the informant. See his testimony Hrg. Transcr. 119:22-:25 (May 19, 2016), Exhibit E.

13. Mr. Protopapas's opinion asserts that I only had available to me four (4) pieces of information in making the allegations in the Petition for Adjudication. That is simply not the case. I had all the facts that Mr. Protopapas asserts in his opinion, but I also had the additional facts outlined above in Paragraph 11. Further, I also had access to the full scope of S.C. Code §44-63-74, which provides, in part, that the funeral director "shall obtain the personal data of the decedent from the next of kin or best qualified person or source available". I also had the fact available that, although the funeral home electronically transmitted the information for the death certificate to DHEC, in this case it had relied upon Bryan Harwell as the Informant as it electronically transmitted that information to DHEC for inclusion on the death certificate. Therefore, I had a great deal more information available at the time I filed the Petition than simply the four facts that Mr. Protopapas alleges in his opinion. And, based upon the totality of the information available at the time, I had a good faith belief in the allegations as did my client, Deborah Harwell.

14. Mr. Protopapas further states in his opinion that "[e]ven more concerning is that shortly after the filing of the Petition, Ms. Edmonds was presented with information that proved that any error that occurred happened either at DHEC or the Funeral Home". Aff. Protopapas, p. 12. What Mr. Protopapas fails to appreciate is that shortly after I was provided with the information he alludes to, i.e., the Affidavit of Sandy Dowling, I was also advised by the Director of the Division of Vital Records that the information that had been submitted by sworn affidavit was not true and that, in fact, the surviving spouse's name had not been included on the death certificate. This information from DHEC directly contradicted the sworn affidavit of Sandy Dowling, the associate funeral home director. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. C, filed July 19, 2016, **Exhibit F**. To say the least, this threw up red flags. I had been presented a sworn affidavit by the associate director of the funeral home that I was told contained false information. Therefore, I immediately subpoenaed the records from DHEC and was provided with DHEC's certified records, which did not support the sworn affidavit I had been provided by the associate director of the funeral home. I received two forms from DHEC, one of which was a computer generated form entitled "South Carolina Department of Health and Environmental Control Certificate of Death". Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. E, filed July 19, 2016 and **Exhibit G**. I was subsequently advised by Angelia Saleeby that this form included all of the information keyed into DHEC's computerized system by the funeral home. This form shows a blank in the surviving spouse field. The second form provided by DHEC is a form entitled "Death Certification", which includes "NA" in the field provided for the surviving spouse's name and is the same form filed in the Probate Court. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. F, filed July 19, 2016 and **Exhibit H**. Further, I also subpoenaed the records of the certifying physician who completed the medical information on the death certificate, Dr. Naso. Third-Party Defendants' Supp. Memo. Opp. Mtn Sanctions, Exh. G, filed July 19, 2016, **Exhibit I**. The certifying physician's records matched DHEC's records and neither included the surviving spouse's name in the appropriate field. At this juncture, we knew the affidavit contained false information and, thus, we could not rely on any of the information in the affidavit as being true, including the funeral director's statement that Bryan Harwell had included Deborah Harwell's name on the death certificate worksheet. For this reason and based upon the facts that we had available at the time, my client instructed me to reject the estate's offer to settle the matter by dismissing all her Petitions with prejudice.

15. Finally, Mr. Protopapas states that as it pertains to each Petition, there is nothing complex regarding the claims and defenses. Aff. Protopapas p. 14. I believe the fact that we have actions involving the Petitions in several different courts provide a complexity that does not normally exist in other cases. There have been proceedings filed in the Probate Court and in the Family Court. There are now actions pending in the Circuit Court. Some claims that Mrs. Harwell may have against the estate can only be filed in the Probate Court. Other actions against her have been filed in the Family Court. She has also been faced with the need to file an action in the Family Court to set aside its original Order and, at the same time on the same day she had two separate Family Court judges having hearings on matters related to the original Order. Her failure to file claims in the Probate Court could easily preclude her from any recovery even if she was successful in the Family Court in setting aside the Order. And, her failure to file her Petitions to preserve her claims would result in a bar for any recovery against the estate. So, all of these matters were intertwined and complex and they should be taken into consideration in finding that the actions that I took were to protect my client and represent her fully under the law.

16. I have been licensed to practice law for almost thirty years. I served as Probate Judge for Horry County for twelve years. Prior to such service, I practiced law in Myrtle Beach and Surfside Beach for fifteen years focusing my practice in the areas of wills, trusts and estate planning, probate administration and litigation, guardianship and conservatorship, elder law and general corporate and tax matters. I returned to the private practice of law in January 2015 and I concentrate my practice in the area of wills, trusts and estate planning, probate and trust administration and litigation, and elder law. I previously served as President of the South Carolina Association of Probate Judges and I also served on the Chief Justice's Probate Judges Advisory Committee. I also served for three years on the SC Bar Probate Code Overhaul Committee that re-wrote our state's Probate Code, which became effective January 2014.

17. In his Supplemental Memorandum in Support of Motions, Respondent Harwell states that he is seeking sanctions against me for two reasons. First, because I signed and filed claims "knowing and admitting under oath that [my] client was not entitled to receive any money from Judge Harwell's estate". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 4. As explained in Paragraph 10, above, Mr. Harwell misinterprets my testimony. Under questioning by Kevin Barth as to the Petition for Adjudication as Surviving Spouse, my testimony was that it was not for purposes of any property rights in the estate and that its purpose

was to find that Mrs. Harwell was the surviving spouse so she could be included on the death certificate. See Hrg. Transcr. 36:14-37:22 (May 19, 2016), Exhibit B.

18. Respondent Harwell's second reason for seeking sanctions against me is that I accused him of committing a felony without investigating the matter at all and without speaking with anyone at all. Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 5. I have set forth above in paragraph 11 the actions that I took to investigate the matter before filing the Petition to amend the death certificate. Respondent Harwell's assertion that I filed the Petition without conducting an investigation and without speaking with anyone is simply not true.

19. Respondent Harwell also states in his Memorandum that "[t]he PR's position in this litigation *has always been* that the Death Certificate could be amended if that was DHEC's protocol". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 6 (emphasis added). This is simply not true. Respondent Harwell has fought to deny and dismiss Deborah Harwell's Petition for adjudication as the decedent's surviving spouse and has also fought to deny and dismiss Deborah Harwell's request to amend the decedent's death certificate from the initial filing of his Answer and Motions to Dismiss up until at least after the July 2016 hearing before your Honor on his Motion to Dismiss. See Answers, Counterclaims and Third-Party Claims and Motion to Dismiss, filed by Respondent Harwell, April 1, 2016 and May 16, 2016.

20. Respondent Harwell also seeks to point out in his Memorandum that one of the reasons that I previously stated for filing the Petition for Adjudication for Deborah Harwell was so Mrs. Harwell could receive benefits due her. Respondent Harwell then alleges that this statement by me in my sworn testimony/Affidavit directly contradicts Mrs. Harwell's sworn testimony at the Family Court hearing stating that "Mrs. Harwell testified at the family court hearing that she had never been denied any benefits and had received all benefits due her. This testimony directly contradicts the sworn testimony/Affidavit of Deirdre Edmonds." Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 6. The testimony of Mrs. Harwell was quite the opposite. Mrs. Harwell testified that "I was not able to obtain retirement because I could not get a death certificate so I got my first check for $400 about three weeks ago." Hrg. Transcr. 36:13-15 (June 16, 2016). **Exhibit J.**

21. Respondent Harwell further alleges that instead of filing the lawsuit to amend the death certificate "the only thing Edmonds or Mrs. Harwell had to do was contact DHEC directly and provide them with information allowing DHEC to correct the error, if in fact, there was an error" and "that no lawsuit for such an amendment needed to be filed at all". Suppl. Memo. in Support of Robert Bryan Harwell's Mot. for Sanctions, p. 7. Respondent Harwell cites the applicable DHEC regulation that allows corrections of obvious errors on certificates by the State Registrar. I would like to point out to this Honorable Court that in my earlier Affidavit dated July 15, 2016, I stated that I did contact DHEC about correcting the error and was advised that unless the informant was willing to submit an affidavit to correct the death certificate, the only way to amend the certificate was through a court order. Further, I have not, as Respondent Harwell alleges held myself out as the "probate expert" although I did, in fact, know about this Regulation from my previous cases as a former probate judge and handling similar issues. Thus, my first attempt was to have the death certificate amended under the DHEC Regulation by contacting Angelia Saleeby before ever filing the Petition to have it amended. It was through these communications, as well as other investigative actions, that I determined there was a good faith basis for filing suit on my client's behalf to amend the death certificate and the obvious omission of her from same.

FURTHER AFFIANT SAYETH NOT!

Deirdre W. Edmonds, Esquire

SWORN to before me this 30th day of January 30, 2017.

Patricia E. White
Notary Public of South Carolina
My Commission Expires: 10-25-2023

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and through his personal representative, Bryan Harwell, Plaintiff, vs. Deborah B. Harwell, Defendant.	Transcript of Record June 16, 2016

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant

Sallie Beth Todd
Family Court Reporter

Part One: Pages 1 - 75

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EXHIBIT
A

1 **A:** It's a request to set aside the Final Decree through 60B.
2 **Q:** Okay and who wrote that for you? Who prepared that for
3 you?
4 **A:** I prepared that myself and --
5 **Q:** Who helped you?
6 **A:** Well, this one's pretty much a form right here and --
7 **Q:** What lawyer helped you prepare this?
8 **A:** I didn't have a lawyer help me prepare this. I didn't
9 have one.
10 **Q:** Okay.
11 **MR. BARTH:** I'd move to introduce this, Your Honor.
12 **THE COURT:** Any objection?
13 **MR. WELSH:** No, ma'am.
14 **THE COURT:** Alright, plaintiff's exhibit number 28.
15 **(PLAINTIFF'S EXHIBIT NUMBER TWENTY EIGHT IS**
16 **ADMITTED INTO EVIDENCE.)**
17 **BY MR. BARTH:**
18 **Q:** Can you please tell me what proof you have that fraud's
19 been committed in this case?
20 **A:** Is that not for the 60B hearing?
21 **Q:** I'm asking you what proof you have that there's been any
22 fraud in this case?
23 **A:** We're going to present a number of assets that have been
24 not presented.
25 **Q:** Okay, they would be what?

1 A: Gosh, there's -- well, here's one. This one, this is a
2 retirement plan. There are two more retirement plans. There
3 was two other accounts.
4 Q: It's a retirement plan that was reported in the year 2000.
5 He hasn't worked at Nelson Mullins in 25 years; has he?
6 A: Let's see if I pulled the right sheet. This is the one
7 that was just sent to me like two weeks ago.
8 Q: Okay.
9 A: That came from social security is the only way I found out
10 about that one.
11 Q: This says $41,000, if you're the beneficiary it's yours
12 isn't it?
13 A: I don't know if I'm the beneficiary.
14 Q: Okay, did you turn this over to the personal
15 representative to try and determine what this is?
16 A: Not yet.
17 Q: Alright and what else?
18 A: Can my attorney hand me my sheet? I mean, I guess we'll
19 have to go over this with both Court's. It's just my notes.
20 Q: Who prepared the spreadsheet?
21 A: I did.
22 Q: Alright.
23 A: There were -- when it became so many things -- well, you
24 asked me for specific things.
25 Q: Yes, ma'am.

1 A: Specific things is in the mediation agreement that they
2 gave wrong appraisals for different assets such as the Cherry
3 Grove home. They gave an approximate $500,000 or something
4 like that and now on the probate section it's listed at
5 $770,000. We had listed it for sale at $1.3.
6 Q: And isn't it true that was, is and always will be a non-
7 marital asset? He owned it before the marriage.
8 A: No, sir. I moved in that house before -- the first night
9 we ever slept there. He was building it when we dated -- we
10 were dating.
11 Q: Even under the prenup you waived an interest in that
12 premarital house; didn't you?
13 A: That's the house that we were living in --
14 Q: Answer my question please. Even in the prenup you waived
15 an interest in that premarital house; didn't you?
16 A: Yes and after we got married we decided to both houses in
17 both of our names, the rental house, the house we were living
18 in and that house so I changed the title of an interest in my
19 house to both of our names and he was to do the same thing
20 with Cherry Grove and he didn't get it -- he just hadn't done
21 it in about three or four months or five months and so we
22 changed it -- I changed it back.
23 Q: You put it -- you took the Cherry Grove house and changed
24 it?
25 A: No, that was the Hobcaw House. We lived there -- we lived

1 in my house for 14 and a half years.
2 Q: Okay. Did you know about the Cherry Grove house before
3 you signed the mediated agreement? Of course you did, you
4 lived in it.
5 A: Yeah.
6 Q: You could have had it appraised if you'd have wanted to.
7 A: Yes.
8 Q: You could have had it appraised if you wanted to; couldn't
9 you? When we were in litigation.
10 A: Are you talking about now, this moment in time?
11 Q: We're talking about before you asked the Court to approve
12 the agreement. You could have had it appraised if you
13 disagreed with the value of it.
14 A: I did disagree with the value at the mediation.
15 Q: Did you hire anybody to appraise it?
16 A: I didn't have to, I had the contract from the real estate
17 agent that had $1.3 million dollars on it and presented that
18 at mediation.
19 Q: What contract was that?
20 A: It was a contract when we decided to sale the house and
21 move down to the south end.
22 Q: Alright.
23 A: I had 401K from Greatwest that I have documents for but
24 it's not anywhere. I don't know where that is. It was $450 -
25 - $445,887.48. I have profit share things that came from MG

1 Trust off of the -- when I went to sign our joint tax return.
2 Then the Nelson Mullins retirement thing came.
3 Q: Let me ask you this one question. All that stuff you're
4 talking about --
5 A: Yes.
6 Q: -- that was all on the '13 tax return, '12 tax return, '11
7 tax return, '10 tax return; wasn't it?
8 A: No, this was on the '14 tax return.
9 Q: And is that the first time any of that had ever shown up?
10 A: I didn't know about MG Trust.
11 Q: Here's my question. Is that the --
12 A: No.
13 Q: -- first time?
14 A: It's the first time that I have seen it, yes.
15 Q: Alright, did you go look at your old tax returns and see
16 if those things are on it?
17 A: I have not looked at all the old tax returns, no. Sorry.
18 Q: Okay.
19 A: Then there was two South Carolina Deferred Compensation
20 Plans that are not listed anywhere and so I don't know where
21 they came from. It was a 457 Plan and a 401K Plan.
22 Q: Okay.
23 A: And then there was an Edenvale Deferred Compensation.
24 There's something form Resolute Services that I did not
25 understand and I have a question about that.

1 Q: Okay.
2 A: There -- everything that I have picked up has different
3 assets on it, our taxes, the prenuptial, the mediation, the
4 county taxes. Everything is totally different.
5 Q: Let me ask you: how long ago did y'all sign that prenup?
6 A: 2001.
7 Q: Okay and you filed tax returns each year after that;
8 right?
9 A: Yes.
10 Q: Investments go up, investments go down.
11 A: Correct.
12 Q: You buy things, you sell things and that happens over
13 time; doesn't it?
14 A: Correct.
15 Q: You wouldn't expect all that to be the same in the 2015
16 when he died as it was in '01; would you?
17 A: No, but I would have expected it to be the same from the
18 mediation to his death.
19 Q: Okay. Did you tell that to Julaan? How long did she
20 represent you by the way?
21 A: I hired her on May the --
22 Q: How long did she represent you?
23 A: -- the first of June, probably for about eight weeks.
24 Q: Okay and how long did Jim McLaren represent you?
25 A: For -- well, he was out of town so he never really filed

1 anything to represent me.
2 Q: How long --
3 A: He called you.
4 Q: That's right. How long was Mr. McLaren assisting you,
5 talking to you about this case?
6 A: I talked to him about being my attorney. He never filed
7 to be my attorney, he just talked to you and I don't know. He
8 was out of town and had pneumonia and was in Hawaii, so
9 probably a month.
10 Q: Okay. After the mediation and after you had the agreement
11 approved why'd you call Baxter Hahn and leave him a message
12 about an IRA?
13 A: I kept getting notifications from Wells Fargo that I was
14 supposed to -- had a notification in my account to please open
15 my account and see what the notice was and then I had a
16 notification that my tax documents would be forthcoming for
17 Wells Fargo but I don't have a Wells Fargo account. I had
18 asked in becoming for like two and a half years or so and I
19 asked David about it and he gave me indication that it was
20 just something that he had done for me so I didn't have any
21 documents on it and I'm just -- is there something out there
22 for me?
23 Q: Well, if you knew that for two and a half years why didn't
24 you say something about it at the mediation because you waived
25 all your rights to the retirement accounts except for the one

1 pension; right?
2 A: Which is one of the problems --
3 Q: Is that right?
4 A: -- yes, it was not revealed to me what they were and we're
5 just now finding out what they were.
6 Q: Okay, why did you call Baxter Hahn and tell him you had an
7 IRA -- you and David had an IRA and you were checking on it?
8 That's what I want to know.
9 A: I called to ask him if -- I said I think that we have an
10 account there and I said I'd like to know what the situation
11 is. Am I a beneficiary and he said I was not.
12 Q: You even had the account number didn't you?
13 A: Uh-huh. (Affirmative response)
14 Q: It says an IRA account for David and myself.
15 A: Uh-huh, that's what I thought it was
16 Q: Okay and he said that's wrong; right?
17 A: He did.
18 Q: Okay and you waived that in the agreement; right?
19 A: He did, in our taxes it had -- well, in his estate its got
20 about $800 and some thousand dollars with Wells Fargo.
21 Q: That's the $800 and some you accused Bryan of stealing?
22 A: No, sir. I didn't accuse Bryan of stealing anything. I
23 sent a note to the account -- to you to say that the $800 --
24 this is a different $899,871 was in the money market account
25 at Bank of America and that because all of that had been taken

1 for the estate by Bryan that -- you know, I felt like I should
2 get something for the tax return. I can't believe they even
3 tried to take my taxes that I paid from each payroll check
4 from me.
5 Q: And what did you say about the $880?
6 A: Which --
7 Q: That he took it from the estate; do you remember that?
8 A: The $880?
9 Q: Yes, ma'am.
10 A: The $899,871 from Bank of America in a money market
11 account was taken for the estate.
12 Q: Okay.
13 A: And Bryan's the personal representative and I sent the
14 note to the estate.
15 Q: Okay.
16 A: Which it was -- subject line -- it was to you and it was
17 subject line, estate of David W. Harwell.
18 Q: Okay. Do you have any proof that he took $800,000 from
19 the estate?
20 A: That account now has $5,905 in it according to the probate
21 office.
22 Q: Do you have any proof that Bryan took the $880,000 from
23 the estate?
24 A: Well, he has to, he's the personal representative. He's
25 the only one that could actually have transferred the money.

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and through his personal representative, Bryan Harwell,	
Plaintiff,	Transcript of Record
vs.	May 19, 2016
Deborah B. Harwell,	
Defendant.	

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter

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EXHIBIT
B

1 **THE COURT:** Do you want to show her the document?
2 **MR. BARTH:** She has one, Your Honor. I just gave her one.
3 **THE COURT:** Alright, look at the -- do you have an
4 evidentiary objection to this document? She has -- the
5 witness has authenticated it, state's she filed it on your
6 behalf, gave the date of filing. Do you have an evidentiary
7 objection to it being made an exhibit?
8 **MS. HARWELL:** No, you can make it an exhibit.
9 **THE COURT:** Alright, plaintiff's exhibit three into
10 evidence without objection -- exhibit four, I apologize.
11 **(PLAINTIFF'S EXHIBIT NUMBER FOUR IS**
12 **ADMITTED INTO EVIDENCE.)**
13 **BY MR. BARTH:**
14 Q: At the time you filed that particular Petition to be
15 adjudicated the surviving spouse were you familiar with the
16 probate definition of a surviving spouse?
17 A: Yes.
18 Q: Okay and is a surviving spouse -- a quote "surviving
19 spouse" under the probate code if all of their property rights
20 have been tended to by a Court Order? If all of the issues
21 involved in their marriage other than the marriage itself, all
22 of the property and debts have been disposed of by prior Court
23 Order is she a surviving spouse under the statute?
24 A: There is a definition in the probate code for a surviving
25 spouse and the defined term if all of the property rights have

1 been settled the person is not a surviving spouse ---
2 Q: Okay.
3 A: --- but Ms. Harwell was Judge Harwell's surviving spouse
4 at his death.
5 Q: And how is that?
6 A: Because they were not divorced and there was not an
7 annulment of their marriage.
8 Q: Okay, in your opinion as a probate lawyer had all of their
9 marital business been tended to by prior Court Order? I mean,
10 all of their assets and debts had been divided by a Court
11 approved agreement.
12 A: She is still a surviving spouse under law.
13 Q: Okay.
14 A: Not for purposes of any property rights through the
15 probate code.
16 Q: Okay so this Summons and Petition as I understand it, and
17 correct me if I'm wrong, asking that she be adjudicated the
18 surviving spouse would not entitle her to any money or
19 anything from the estate?
20 A: No, sir. That was for purposes of the Court finding she
21 was the surviving spouse so she could be included on the death
22 certificate.
23 Q: Okay. And you filed a third claim on her behalf?
24 A: No, I did not.
25 Q: I would like for you to look at it, please. Would you

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-21-1435
Deborah B. Harwell,	)	
Petitioner,	)	
v.	)	**AFFIDAVIT OF ANGELIA SALEEBY**
Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,	)	
Respondents,	)	
v.	)	
Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,	)	
Third-Party Defendants.	)	

PERSONALLY APPEARED before me, Angelia Saleeby, who first being duly sworn deposes and says as follows:

1. I am over the age of twenty-one years (21) and this Affidavit represents my personal knowledge of the facts set forth herein.

2. I am employed by the Department of Health and Environmental Control (DHEC), State of South Carolina, and serve as the Director of the Division of Vital Records.

3. South Carolina DHEC is the official state agency charged with recording the birth, marriage and death records in the state of South Carolina.

4. In the event of a death, an Informant provides information required on the death record for filing purposes. The South Carolina Certificate of Death Worksheet is not filed with DHEC.

5. The funeral home or person acting as such, is responsible for filing the death record either electronically by entering the demographic information through the state's electronic vital records system or by submitting it on paper. A physician or coroner is responsible for completing the medical portion by entering it electronically or on paper.

6. One of the fields on the death record is "surviving spouse's name".

7. If nothing is entered in the "surviving spouse's name" field at the time of filing, the electronic vital records system fills in the blank with "NA" at the time of issuance.

8. In the case of decedent David Walker Harwell, the death record was filed by Stoudenmire-Dowling Funeral Home. The record filed with DHEC, a copy of which is attached, shows the space for the name of the surviving spouse was left blank at the time of filing. As a default in the electronic vital records system, because this field was left blank, "NA" was automatically printed on the death certificate at the time of issuance.

FURTHER AFFIANT SAYETH NOT

Angelia Saleeby

SWORN TO before me this
20th day of July 2016.

Notary Public for South Carolina
My commission Expires: 11-10-25

{00629438.DOCX.1 }

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number 15 034693

NAME OF DECEDENT — For use by physician or institution

David Walker Harwell

Items 1-24c To Be Completed/Verified By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-38-2469
4a. AGE-Last Birthday (Years): 83
4b. UNDER 1 YEAR: Months / Days
4c. UNDER 1 DAY: Hours / Minutes
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1932
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOS, SC
7a. RESIDENCE-STATE: South Carolina
7b. COUNTY: Florence
7c. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.
7f. ZIP CODE: 29506
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN US ARMED FORCES? ☒ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☐ Married ☒ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage): Lacy Rankin
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1339 Lazer Place, Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions)
IF DEATH OCCURRED IN HOSPITAL: ☒ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival
IF DEATH OCCURRED ELSEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)
16. FACILITY NAME (If not institution, give street and number): McLeod Regional Medical Center of the Pee Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire - Dowling Funeral Home, Inc.
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT: John F. Dowling (Electronically Verified)
23. LICENSE NUMBER (Of Licensee): 1283
23. 2402 S. Irby St. Florence, SC 29505
24a. EMBALMER (Signature): Daniel Benton
24b. EMBALMER LICENSE NUMBER: 3559
24c. LICENSE NUMBER (Of Facility): 889

Items 25-43 To Be Completed By: MEDICAL CERTIFIER

ITEMS 26-35 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
24. DATE PRONOUNCED DEAD (MM/DD/YYYY)
25. TIME PRONOUNCED DEAD
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
27. LICENSE NUMBER
28. DATE SIGNED (mm/dd/yyyy)
29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): September 30, 2015
30. ACTUAL OR PRESUMED TIME OF DEATH: 1305
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)

32. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

		Approximate interval Onset to death
IMMEDIATE CAUSE (Final disease or condition resulting in death) a.	anoxic brain injury	days
Due to (or as a consequence of): b.	ventricular arrhythmia	days
Due to (or as a consequence of): c.	Ischemic cardiomyopathy	years
Due to (or as a consequence of): d.	coronary artery disease	years
Due to (or as a consequence of):		

Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST

PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.

33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☒ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☒ Natural ☐ Homicide ☐ Accident ☐ Pending Investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Spell Month)
39. TIME OF INJURY
40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY: State: City or Town: County:
Street & Number: Apartment Number: Zip Code:
43. DESCRIBE HOW INJURY OCCURRED:
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)

45. CERTIFIER (Check only one)
☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier: Nicolette Balistreri NASO

46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32): NicoletteNaso, MD 901 E. Cheves St. Ste 600 Florence SC 29506
46a. NAME OF ATTENDING PHYSICIAN OF OTHER THAN CERTIFIER
47. TITLE OF CERTIFIER: MD
48. LICENSE NUMBER: 15707
49. DATE CERTIFIED (MM/DD/YYYY): 10-13-2015
50. FOR REGISTRAR ONLY - DATE FILED (MM/DD/YYYY): 10-13-2015

Items 51-63 To Be Completed By: Funeral Director

51. DECEDENT'S EDUCATION - Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
52. DECEDENT OF HISPANIC ORIGIN - Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.
☒ No, not Spanish/Hispanic/Latino/Latina
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify)
53. DECEDENT'S RACE - (Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED"): Judge-Lawyer
55. KIND OF BUSINESS/INDUSTRY: Legal

Amendment Code
Amendment Number
Date
User ID
BRTP NO. 202982

DHEC 670 Rev. 2004

STATE OF SOUTH CAROLINA

COUNTY OF Florence

IN THE MATTER OF: David W. Harwell

(Decedent)

THE PROBATE COURT

CASE NUMBER: 2015-ES-21-00778

FILED 2015 OCT 12 PM 4:39

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

*

Petitioner(s)

vs.

*

Respondent(s)

APPLICATION FOR INFORMAL
- [x] PROBATE OF WILL
- [x] APPOINTMENT

(check any that apply)

***PETITION FOR FORMAL**
- [ ] TESTACY
- [ ] APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. N/A

2. Decedent Information:

Full Legal Name (including all known names): David W. Harwell

Date of Birth: 1-8-1932

Date of Death: 9-30-2015

Age at date of death: 83

3. Venue for this proceeding is proper in this County because:

- [x] Decedent was domiciled in this County at date of death: Address: _____; County: _____; State: South Carolina. 2208 Timberlane Dr., Florence, SC
- [ ] Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death: Address: _____; County _____; State: South Carolina
- [ ] Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____

EXHIBIT A

FORM #300ES (1/2014)
2-2-504, 62-3-102, 62-3-203, 62-3-301, 62-3-302, 62-3-303, 62-3-308, 62-3-311, 62-3-401, 62-3-402, 2-3-404, 62-3-409, 62-3-414, 62-3-601, 62-3-602, 62-3,704, 62-3-804, 44-23-1090, 44-23-1120

Atty Clement B

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
R Bryan Harwell		1389 Lazar Place, Florence, SC	son
William Baxter Harwell		1191 Carnoustie Ct, Myrtle Bch, SC	son

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent

(See mediation/separation agreement filed 7-21-15) Case # 2015-DR-26-691 Family Court Order Horry County

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of $ TBD and/or probate real estate having an approximate value of $ TBD. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

☒ The original is attached.
☒ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: 7-22-15
Codicil(s): ____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

   ____

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

   - [x] named as Primary Personal Representative in Will
   - [ ] named as Alternate Personal Representative in Will
   - [ ] nominee of above Primary Personal Representative in Will
   - [ ] nominee of above Alternate Personal Representative in Will
   - [ ] surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
   - [ ] other devisee of Decedent (describe): _____ or nominee of said devisee
   - [ ] surviving spouse of Decedent or nominee of said spouse
   - [ ] other heir of Decedent (describe): _____ or nominee of said heir
   - [ ] creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
   - [ ] other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

   NONE

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 6th day of Oct. 20 15

Sharon C. Davis
Notary Public for South Carolina
My Commission Expires: 6/19/19

Signature of Applicant/Petitioner: R. Bryan Harwell
Print Full Name: Robert Bryan Harwell
Address: 1389 Latta Place
Florence, S.C. 29501
Telephone (work): 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan_Harwell@scd.uscourts.gov
Relationship to Decedent/Estate: Son

SWORN to before me this ____ day of ____. 20 ____

Notary Public for South Carolina
My Commission Expires: ____

Signature of Co-Applicant/Co-Petitioner:
Print Full Name:
Address:
Telephone (work)
(Home):
(Cell):
Email:
Relationship to Decedent/Estate:

ORM #300ES (1/2014)

B-4

C5

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed 7-22-2015 be informally ☒ GRANTED ☐ DENIED.

Executed this 13th day of OCT, 2015.

J. MUNFORD SCOTT, JR., Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

☐ Fiduciary Bond in the amount of $_____
☐ Bond waived by Will or Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other _____

Notice to Creditors
☒ Required
☐ Not Required

Executed this 13th day of OCT, 2015.

J. MUNFORD SCOTT, JR., Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: R. Bryan Harwell
Print Full Name: ROBERT BRYAN HARWELL
Address: 1389 LAZAR PLACE
Florence S.C. 29501
Telephone (Work): 843-676-3800
(Home): 843-662-6598
(Cell): 843-453-9585
Email: Bryan_Harwell@scd.uscourts.gov

Signature:
Print Full Name:
Address:

Telephone (Work):
(Home):
(Cell):
Email:

Attorney:
Address:

Telephone:
Email:

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and through his personal representative, Bryan Harwell,	
Plaintiff,	Transcript of Record
vs.	May 19, 2016
Deborah B. Harwell,	
Defendant.	

B E F O R E:

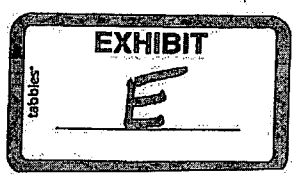
Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Sallie Beth Todd
Family Court Reporter

PART 2



1 witness regarding those issues you need to ask those.
2 Anything he might have done to you, you didn't file a Rule to
3 Show Cause so that's not before me. I've allowed you some
4 latitude but you need to move on.
5 **BY MS. HARWELL:**
6 **Q:** In pertaining to the death certificate that is in this
7 paper that you filed; did you ask for the death certificate to
8 be altered?
9 **A:** No, ma'am. Let me tell you, I signed a form, a DHEC
10 worksheet form that gave your name -- it gave your name and it
11 said, I think Deborah Boggs, and it also said married but
12 separated. The form -- and I gave that to the funeral home.
13 I don't deal directly, and I did not deal directly with DHEC.
14 The original form, as I understand it, which Ms. Edmonds has
15 that Mr. Dowling submitted indicated your name and it said
16 married, instead of married but separated. The only change
17 that I know of is that they were changing married to married
18 but separated. I signed the correct information, gave that
19 information to the funeral home with my brother present. They
20 have always known you were married but separated and it's my
21 understanding that was passed on to DHEC.
22 **Q:** Did you see the death certificate when it came back?
23 **A:** I did and it said N/A under surviving spouse and I even
24 contacted -- when I got it from the funeral home because the
25 provided it to me. DHEC didn't send it to me. I don't

STATE OF SOUTH CAROLINA, COUNTY OF FLORENCE Estate of David W. Harwell Deborah B. Harwell, Petitioner, vs. Robert Bryan Harwell, Individually And as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, Respondent(s).	)	IN THE PROBATE COURT CASE NO. 2015-ES21-00778 AFFIDAVIT OF SANDY DOWLING

Personally appeared before me, Sandy Dowling, who first duly sworn, deposes and says as follows:

1. I am the Associate Director at Stoudenmire Dowling Funeral Home in Florence, South Carolina, and in that capacity handled the funeral arrangement for and the funeral of Honorable David W. Harwell.

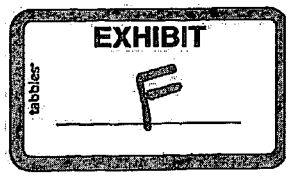
2. As part of my duties, I am required to fill out a computer form provided to us by State of South Carolina Department of Health and Environmental Control, known as an Abstract Certificate of Death. From the information entered by me, DHEC issues the Certified Certificate of Death.

3. Attached to this Affidavit is the form I completed in conjunction with the death of Judge Harwell. The information was given to me by his son, R. Bryan Harwell.

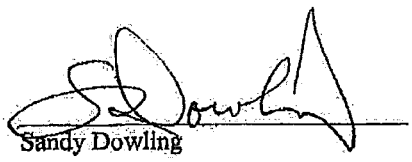
4. The form that was completed and submitted by me named the surviving spouse as "Deborah Boggs", in accordance with our general procedures.

5. I, as the author of this document, have nothing to do with the actual completion of the Certified Certificate of Death and the issuance of same. That task is accomplished by an employee at DHEC.

Attachment C

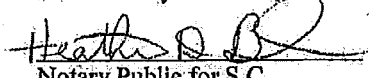


FURTHER DEPONENT SAITH NOT!



Sandy Dowling

SWORN TO before me
This 10th day of March, 2016



Notary Public for S.C.
Commission Expires: 2-12-23

C-2

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number 15 034683

NAME OF DECEDENT David Walker Harwell
For use by physician or institution

Items 1-23 To Be Completed/Verified By: FUNERAL DIRECTOR

1. DECEDENT'S LEGAL NAME (Include AKA's, if any) (First, Middle, Last): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-36-2469
4a. AGE-Last Birthday (Years): 83
4b. UNDER 1 YEAR (Months, Days)
4c. UNDER 1 DAY (Hours, Minutes)
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1932
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOS, SC
7a. RESIDENCE-STATE: South Carolina
7b. COUNTY: Florence
7c. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.
7f. ZIP CODE: 29506
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN US ARMED FORCES? ☒ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage): Deborah Boggs
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1389 Lezar Place Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions)
IF DEATH OCCURRED IN HOSPITAL: ☒ Inpatient ☐ Emergency Room/Outpatient ☐ Dead on Arrival
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)
15. FACILITY NAME (If not in hospital, give street and number): McLeod Regional Medical Center of the Pee Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudenmire - Dowling Funeral Home, Inc. 2402 S. Irby St. Florence, SC 29505
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT
23. LICENSE NUMBER (Of Licensee)
23a. EMBALMER (If Other): Daniel Benton
23b. EMBALMER LICENSE NUMBER: 3669
23c. LICENSE NUMBER (Of Facility): 888

Items 24-28 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
24. DATE PRONOUNCED DEAD (MM/DD/YYYY)
25. TIME PRONOUNCED DEAD
26. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
27. LICENSE NUMBER
28. DATE SIGNED (MM/DD/YYYY)

Items 29-43 To Be Completed By: MEDICAL CERTIFIER

29. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): September 30, 2015
30. ACTUAL OR PRESUMED TIME OF DEATH: 12:58 PM
31. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)

32. PART 1. Enter the chain of events - disease, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

		Approximate interval Onset to death
IMMEDIATE CAUSE (Final disease or condition resulting in death) a.	Due to (or as a consequence of):	
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST b.	Due to (or as a consequence of):	
c.	Due to (or as a consequence of):	
d.	Due to (or as a consequence of):	

PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.
33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☐ Natural ☐ Homicide ☐ Accident ☐ Pending Investigation ☐ Suicide ☐ Could not be determined
38. DATE OF INJURY (Spell Month)
39. TIME OF INJURY
40. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY: State: City or Town: County: Street & Number: Apartment Number: Zip Code:
43. DESCRIBE HOW INJURY OCCURRED:
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other (Specify)
45. CERTIFIER (Check only one)
☐ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying physician-To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner/Medical Examiner-On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier:
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)
46a. NAME OF ATTENDING PHYSICIAN (IF OTHER THAN CERTIFIER)
47. TITLE OF CERTIFIER
48. LICENSE NUMBER
49. DATE CERTIFIED (MM/DD/YYYY)
50. FOR REGISTRAR ONLY - DATE FILED (MM/DD/YYYY)

Items 51-55 To Be Completed By: Funeral Director

51. DECEDENT'S EDUCATION- Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
52. DECEDENT OF HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino/Latina. Check the "No" box if decedent is not Spanish/Hispanic/Latino/Latina.
☒ No, not Spanish/Hispanic/Latino/Latina
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, other Spanish/Hispanic/Latino/Latina (Specify)
53. DECEDENT'S RACE (Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)
54. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED"): Judge-Lawyer
55. KIND OF BUSINESS/INDUSTRY: Legal

Amendment Code
Amendment Number
Date
User ID
BRTP ND. 202982
DHI C 870 Rev. 2004

C-3

CERTIFIED SIGNATURE ONLY

CERTIFICATION OF VITAL RECORD

This is a true copy of the death certificate containing the physician's original signature on file in the records of the Division of Vital Records, Public Health Statistics and Information Services of the South Carolina Department of Health and Environmental Control. The certificate is issued pursuant to Subpoena, Case # 2015-ES-21-00778 of the Probate Court in Florence County dated March 14, 2016.

Angela P. Salerno
Director

ATTEST:

DATE: March 15, 2015

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number 15 034483

1. NAME OF DECEDENT: David Walker Howell
2. SEX: Male
3. SOCIAL SECURITY: 250-66-6480
4. DATE OF BIRTH: 07/08/1953
5. BIRTHPLACE: Florence County NOS, SC
6. RESIDENCE: South Carolina
7. COUNTY: Florence
8. CITY OR TOWN: Florence
9. STREET AND NUMBER: 2205 Timberlake Drive
10. APT. NO.
11. ZIP CODE: 29506
12. INSIDE CITY LIMITS?
13. MARITAL STATUS: Married
14. SPOUSE'S NAME: Lucy Rankin
15. FATHER'S NAME: Master Hicks Howell Sr.
16. MOTHER'S MAIDEN NAME: Lucy Rankin
17. INFORMANT'S NAME: Bryan Howell
18. RELATIONSHIP TO DECEDENT: Son
19. MAILING ADDRESS: 1209 Lower Pines, Florence, South Carolina 29501
20. PLACE OF DEATH: McLeod Regional Medical Center of Pee Dee, Inc
21. CITY OR TOWN: Florence, South Carolina 29506
22. COUNTY OF DEATH: Florence
23. DATE OF DEATH: September 30, 2015
24. TIME OF DEATH: 1:15
25. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. Do NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without stating the underlying cause that caused them. Enter only one cause on a line. Add additional lines if necessary.
a. anoxic brain injury — days
b. ventricular arrhythmia — days
c. Ischemic cardiomyopathy — years
d. coronary artery disease — years
26. PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.
27. WAS AN AUTOPSY PERFORMED?
28. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?
29. DID TOBACCO USE CONTRIBUTE TO DEATH? Yes
30. If Female: Not pregnant at time of death
31. MANNER OF DEATH: Natural
32. DATE OF INJURY
33. TIME OF INJURY
34. PLACE OF INJURY
35. DESCRIBE HOW INJURY OCCURRED
36. I attest that, to the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of certifier: Nicolette Nassar DO
37. CERTIFIER: Nicolette Nassar, MD 901 E. Cheves St. Ste 600 Florence SC
38. DATE CERTIFIED: 10-13-2015
39. LICENSE NUMBER: 16107
40. TYPE OF CERTIFIER: MD
41. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
42. DATE PRONOUNCED DEAD: 10-14-2015
43. WAS MEDICAL EXAMINER CONTACTED?
44. HOW DID INJURY OCCUR?
45. DESCRIBE HOW INJURY OCCURRED
46. DESCRIBE DRUG DOCUMENTATION
47. DATE OF NOTIFICATION: Judge-Lawyer
48. NAME OF NOTIFIER: Legal

Name of Decedent: David Walker Howell

Date of Death Certificate: September 30, 2015

Funeral Director: John F. Dowling (Electronically Verified)

Cremation Number

Date Signature

Date Registered

Registrar's Signature

SC04963490

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC

Attachment E

EXHIBIT G

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-15-034683

DECEDENT'S NAME: *DAVID WALKER HARWELL*
SEX: MALE
AKA's: NA
SOCIAL SECURITY NUMBER: 250-36-2469
ARMED FORCES: YES
DATE OF BIRTH: JANUARY 08, 1932
AGE: 83 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT
COUNTY OF DEATH: FLORENCE
NAME AND ADDRESS OF PLACE OF DEATH: MCLEOD REGIONAL MEDICAL CENTER OF THE PEE DEE, INC, FLORENCE, SC 29506
PLACE OF DISPOSITION: MOUNT HOPE CEMETERY
DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2208 TIMBERLANE DRIVE, FLORENCE, FLORENCE COUNTY, SC, 29506
PLACE OF BIRTH: SOUTH CAROLINA
MARITAL STATUS: MARRIED BUT SEPARATED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: BAXTER HICKS HARWELL SR.
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LACY RANKIN
INFORMANT'S NAME: BRYAN HARWELL
RELATIONSHIP: SON
MAILING ADDRESS: 1389 LAZAR PLACE, FLORENCE, SC, 29501
FUNERAL HOME: STOUDENMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC, 29505
FUNERAL DIRECTOR: JOHN F. DOWLING
LICENSE NUMBER: 1283
EMBALMER'S NAME: DANIEL BENTON
LICENSE NUMBER: 3559
ACTUAL OR PRESUMED DATE OF DEATH : SEPTEMBER 30, 2015
MANNER OF DEATH : NATURAL
ACTUAL OR PRESUMED TIME OF DEATH: 1305
CAUSE OF DEATH - PART I
ANOXIC BRAIN INJURY
VENTRICULAR ARRHYTHMIA
ISCHEMIC CARDIOMYOPATHY
CORONARY ARTERY DISEASE
OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? NO
AUTOPSY PERFORMED? NO
AUTOPSY AVAILABLE? NA
DATE OF INJURY: NA
TIME OF INJURY: NA
INJURY AT WORK? NA
PLACE OF INJURY: NA
LOCATION OF INJURY: NA
HOW THE INJURY OCCURRED?
NA

CERTIFIER NAME AND TITLE: NICOLETTE NASO, DR.
LICENSE NUMBER: 15707
CERTIFIER'S ADDRESS: NA
DATE FILED: OCTOBER 13, 2015
DATE OF ISSUANCE: MARCH 15, 2016
SPECIAL INSTRUCTIONS :
NA

ATTEST: This is a true copy of the death certificate on file in the Division of Vital Records, Public Health Statistics and Information Services of the South Carolina Department of Health and Environmental Control and is issued pursuant to Subpoena of the South Carolina Probate Court of Florence County, Case No. 2015-ES-21-00778. Dated March 14, 2016.

Lekia Richards

DATE: March 15, 2016

Lekia Richards
Assistant to the Director

SC04963288

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

DHEC

STATE OF SOUTH CAROLINA
VIOLATION OF FEDERAL LAW TO ALTER THIS CERTIFICATE

Attachment P

EXHIBIT
H

e822430

State of South Carolina
Department of Health and Environmental Control
CERTIFICATE OF DEATH

State Birth Number

State File Number 16 034883

1. DECEDENT'S LEGAL NAME (Include AKA's, Suffix (First, Middle, Last)): David Walker Harwell
2. SEX: Male
3. SOCIAL SECURITY: 250-38-2469
4a. AGE-Last Birthday (Years): 43
4b. UNDER 1 YEAR: Months / Days
4c. UNDER 1 DAY: Hours / Minutes
5. DATE OF BIRTH (MM/DD/YYYY): 01/08/1932
6. BIRTHPLACE (City and State or Foreign Country): Florence County NOB, SC
7a. RESIDENCE-STATE: South Carolina
7b. COUNTY: Florence
7c. CITY OR TOWN: Florence
7d. STREET AND NUMBER: 2208 Timberlane Drive
7e. APT. NO.
7f. ZIP CODE: 29505
7g. INSIDE CITY LIMITS? ☐ Yes ☒ No
8. EVER IN US ARMED FORCES? ☐ Yes ☐ No
9. MARITAL STATUS AT TIME OF DEATH: ☐ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
10. SURVIVING SPOUSE'S NAME (If Wife, give name prior to first marriage)
11. FATHER'S NAME (First, Middle, Last): Baxter Hicks Harwell Sr.
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last): Lacy Rankin
13a. INFORMANT'S NAME: Bryan Harwell
13b. RELATIONSHIP TO DECEDENT: Son
13c. MAILING ADDRESS (Street and Number, City, State, Zip Code): 1380 Lazar Place, Florence, South Carolina 29501
14. PLACE OF DEATH (Check only one; see instructions): ☒ Hospital ☐ Emergency Room/Outpatient ☐ Dead on Arrival ☐ Nursing home/Long term care facility ☐ Decedent's home ☐ Other (Specify)
15. FACILITY NAME (If not hospital, give street address): McLeod Regional Medical Center of the Pee Dee, Inc
16. CITY OR TOWN, STATE AND ZIP CODE: Florence, South Carolina 29506
17. COUNTY OF DEATH: Florence
18. METHOD OF DISPOSITION: ☐ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
19. PLACE OF DISPOSITION (Name of Cemetery, crematory, other place): Mount Hope Cemetery
20. LOCATION-CITY, TOWN AND STATE: Florence, South Carolina
21. NAME AND ADDRESS OF FUNERAL FACILITY: Stoudemire - Dowling Funeral Home, Inc.
22. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT: John F. Dowling (Electronically Verified)
23. LICENSE NUMBER (of Licensee): 1283
24. FUNERAL FACILITY LICENSE NUMBER: 2402 S. Irby St. Florence, SC 29505
25a. EVALUATOR (Signature): Daniel Benton
25b. EVALUATOR LICENSE NUMBER: 3559
25c. LICENSE NUMBER (of Facility): 868

Items 1-25c To Be Completed By: FUNERAL DIRECTOR

NAME OF DECEDENT
For use by physicians or institution
David Walker Harwell

26. ITEMS 26-29 MUST BE COMPLETED BY PERSON WHO PRONOUNCES OR CERTIFIES DEATH
27. DATE PRONOUNCED DEAD (MM/DD/YYYY)
28. TIME PRONOUNCED DEAD
29. SIGNATURE OF PERSON PRONOUNCING DEATH (Only when applicable)
30. LICENSE NUMBER
31. DATE SIGNED (mm/dd/yyyy)
32. ACTUAL OR PRESUMED DATE OF DEATH (Spell Month): September 30, 2015
33. ACTUAL OR PRESUMED TIME OF DEATH: 1305
34. WAS CORONER OR MEDICAL EXAMINER CONTACTED? ☐ Yes ☒ No

CAUSE OF DEATH (See instructions and examples)

32. PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. Add additional lines if necessary.

IMMEDIATE CAUSE (Final disease or condition resulting in death): a. anoxic brain injury — Approximate Interval Onset to death: days
Sequentially list conditions, if any, leading to the immediate cause. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST:
b. ventricular arrhythmia — Due to (or as a consequence of): days
c. Ischemic cardiomyopathy — Due to (or as a consequence of): years
d. coronary artery disease — Due to (or as a consequence of): years

PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I.

33. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. DID TOBACCO USE CONTRIBUTE TO DEATH? ☒ Yes ☐ Probably ☐ No ☐ Unknown
36. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 42 days to one year before death ☐ Unknown if pregnant within the past year
37. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
38. CAUSE OF INJURY (Spell Month)
39. TIME OF INJURY
40. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area)
41. INJURY AT WORK? ☐ Yes ☐ No
42. LOCATION OF INJURY, State: City or Town: County:
Street & Number: Apartment Number: Zip Code:
43. DESCRIBE HOW INJURY OCCURRED
44. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)
45. CERTIFIER (Check only one)
☒ Certifying Physician - To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Pronouncing and Certifying Physician - To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
☐ Coroner - I hereby certify that this death came under my jurisdiction, to the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.
Signature of Certifier: Nicolette Bolsterli Naso
46. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32): Nicolette Naso, MD 0012 Cheves St. Florence SC 29501
47. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER
48. TITLE OF CERTIFIER: MD
49. LICENSE NUMBER: 15707
50. DATE CERTIFIED (MM/DD/YYYY): 10-13-2015
51. FOR REGISTRAR ONLY - DATE FILED (MM/DD/YYYY)

Items 51-55 To Be Completed By: Funeral Director

52. DECEDENT'S EDUCATION - Check the box that best describes the highest degree or level of school completed at the time of death.
☐ 8th grade or less
☐ 9th-12th grade; no diploma
☐ High school graduate or GED completed
☐ Some college credit, but no degree
☐ Associate degree (e.g., AA, AS)
☐ Bachelor's degree (e.g., BA, AB, BS)
☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA)
☒ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)
53. DECEDENT OF HISPANIC ORIGIN - Check the box that best describes whether the decedent is of Hispanic origin. Check the "No" box if decedent is not Hispanic/Spanish/Latino.
☒ No, not Spanish/Hispanic/Latino
☐ Yes, Mexican, Mexican American, Chicano/Chicana
☐ Yes, Puerto Rican
☐ Yes, Cuban
☐ Yes, Other Spanish/Hispanic/Latino (Specify)
54. RACE - (Check one or more races to indicate what the decedent considered himself or herself to be)
☒ White
☐ Black or African American
☐ American Indian or Alaska Native (Name of the enrolled or principal tribe)
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian (Specify)
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander (Specify)
☐ Other (Specify)

55. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE THE TERM "RETIRED")
Judge-Lawyer
56. KIND OF BUSINESS/INDUSTRY
Legal

Attachment Code
Amendment Number
Date
Initials
DHTP NO. 202982
DHEC 570 Rev. 2004

Attachment G

EXHIBIT I

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
COUNTY OF HORRY)	2015-DR-26-691
David W. Harwell by and through his personal representative, Bryan Harwell, Plaintiff, vs. Deborah B. Harwell, Defendant.	**Transcript of Record**
	June 16, 2016

B E F O R E:

Honorable Melissa Buckhannon
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Kevin M. Barth, Esquire
Gena Ervin, Esquire
Attorneys for Plaintiff

Cliff Welsh, Esquire
Attorney for Defendant

Sallie Beth Todd
Family Court Reporter

Part One: Pages 1 - 75

COPY

EXHIBIT J

1 A: I guess that's the time you're talking about.
2 Q: Okay. Are you currently employed?
3 A: Yes, sir. I am.
4 Q: At the marina?
5 A: Yes, sir.
6 Q: Anywhere else?
7 A: No.
8 Q: Can you tell me what you make at the marina?
9 A: I make $800 -- I make $900 a week.
10 Q: Okay, any other income other than your --
11 A: No.
12 Q: -- late husband's retirement?
13 A: I was not able to obtain retirement because I could not
14 get a death certificate so I got my first check for $400 about
15 three weeks ago.
16 Q: About three weeks ago, okay. Now, you used to -- do you
17 have a college degree?
18 A: Yes, sir.
19 Q: From where?
20 A: From Garner Webb.
21 Q: And can you tell me what your degree is in, please?
22 A: Education.
23 Q: Alright, any further education after that?
24 A: No, sir.
25 Q: Alright and you owned a business here at the beach?

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-21-1435

Deborah B. Harwell,

Petitioner,

v.

Robert Bryan Harwell, individually and as Personal Representative of the Estate Of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records,

Respondents,

v.

Law Office of Deirdre W. Edmonds, PA; and Deidre W. Edmonds, individually,

Third-Party Defendants.

EXPERT WITNESS REPORT OF BURNELE VENABLE POWELL

I. INTRODUCTION

A. Qualifications

Now comes Burnele Venable Powell to report the following:

I am the Miles and Ann Loadholt Chair of Law Emeritus, and Distinguished Professor Emeritus of Legal Studies of the University of South Carolina School of Law, having retired from the regular faculty in May 2014 to concentrate on scholarly research, academic publishing, and consulting on matters of legal ethics. I became Dean of Law of the University of South Carolina School of Law in January 2004 and resigned as Dean and returned to full-time teaching after two years. Prior to coming to the University of South Carolina, I served as Dean of the University of Missouri–Kansas City School of Law (1994-2003) and as a member of the faculty, at successive ranks, at the University of North Carolina School of Law (UNC-Chapel Hill, 1979-1994).

Since approximately 1985, I have taught courses and seminars in Professional Responsibility—the subject matter of which focuses on mastery of the legal ethics and practices of the legal profession, including the role of the courts and the concerns of the public. I am coauthor of a casebook on legal ethics, entitled LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS (4th edition 2009). On a regular basis during the past 30 years, I taught professional school students (*viz.*, graduate-level students), lectured to lawyers and judges about legal ethics and the state of the legal profession, and served as an advisor to scholarly and educational enterprises such as the Multistate Professional Responsibility Exam Drafting Committee (1995-2013) and the ABA *Journal of the Professional Lawyer* (2006-2013). I have been published widely in major law reviews and journals and quoted nationally in newspapers and magazines on a broad range of topics, including lawyer regulatory reform, lawyers and consumer interests, and the morality of lawyer ethics. For 16 years (1993-2009), I served on the Board of Directors of Consumers Union, the publishers of *Consumer Reports Magazine* and, in September 2014, agreed to serve on Consumers Union's Conflicts of Interest Advisory Committee. I have also served in various volunteer leadership roles with state bars in Massachusetts, North Carolina, Missouri, South Carolina, and the American Bar Association (including volunteer service with the ABA as the founding Chair of the ABA Center for Professional Responsibility Coordinating Council, the committee that coordinates the work of the ABA's presidentially appointed committees with respect to such matters as lawyer ethics, lawyer discipline and regulation, professionalism, and client services).

My studies, teaching, lecturing, and publishing have specifically included matters related to the practice of law and the regulation and disciplining of lawyers.

B. The Assignment

I have been asked by Attorney Deirdre W. Edmonds, for my opinion regarding whether she acted in a professionally ethical manner when, on behalf of her client, Deborah Harwell, Edmonds:

(1) petitioned for adjudication of her client's right to be designated David W. Harwell's surviving spouse and, pursuant to that designation, that her husband's death certificate to be amended to declare Deborah Harwell as the surviving spouse; and

(2) filed creditor claims in Probate Court seeking a sum of $3.1 million dollars and an additional sum of approximately $1,000 for costs incurred in publishing the obituary of her client's spouse, David W. Harwell.

Although filings like the above-described are commonly of little note, in the instant case the personal representative of David W. Harwell's estate, Robert Bryan Harwell, filed the instant actions. More specifically, by affidavit submitted by Attorney Peter D. Protopapas in support of Respondent Harwell's account of the facts relevant to Edmonds' efforts to adjudicate the status and designation of her surviving-spouse client and to perfect her claims as creditor, the personal representative of David W. Harwell's

estate has advanced the notion that the disputed issues of fact and law on which Attorney Edmonds' advocacy rests are "specious and frivolous in and of themselves."

To the contrary, however, after considering the circumstances and motivations of Attorney Edmonds' handling of the petitions that are the focus of this case, only two conclusions are warranted. First, as regards the Adjudication of the Surviving Spouse and Correction of the Death Certificate, the facts surrounding why the personal representative of David W. Harwell's estate failed to achieve designation of Deborah Harwell as the surviving spouse on her husband's death certificate are, without further investigation, unknown and perhaps unknowable. Notwithstanding the charges levied in conclusory rhetorical flourishes that are all too common to advocacy in the family courts, Attorney Edmonds' pleas for relief on behalf of her client were reasonable—and therefore permitted—in the context of the broad latitude that is to be afforded counsel in litigation pleadings.

Second, with respect to the Creditor's Claim Petitions, consideration of the litigation context is, again, required. As counsel, Attorney Edmonds could reasonably rely on the factual input of her client, her own due diligence, and her years of experience with probate matters to arrive at working conclusions about the facts of a case. Exigencies may require, in other words, that pleading decisions be made under constraints, but a reasonable decision about the facts of a case—even if later proven to be factually inaccurate in some respect—is still a necessarily protected decision under our adversarial system.

Accordingly, in order fully to understand why Respondent's grievances are not entitled to relief, I have set forth below the basic facts of this dispute, as gleaned from Attorney Edmonds' Background Facts, in her Memorandum in Support of Motion to Dismiss and from my brief telephone discussion with her.

C. Background Facts

Petitioner, Mrs. Deborah B. Harwell, married David W. Harwell on November 21, 2001. Due to mutual differences the two separated in February 2015.

Following mediation in July 2015, the Hon. James A Spruill, III approved a Mediated Settlement Agreement declaring the terms of their separation.

David W. Harwell perished September 30, 2015—still married to Deborah B. Harwell at the time of his death. Respondent Robert Bryan Harwell, son of the decedent, was appointed the personal representative of David W. Harwell's estate.

As personal representative of the estate, Respondent Robert Bryan Harwell ("Informant") was responsible for providing information to the funeral home that is necessary to complete David W. Harwell's death certificate. (That information is then conveyed to the South Carolina Department of Health and Environmental Control Vital Records Division.)

At the time relevant to the disputed pleadings, Mrs. Harwell was not listed as the surviving spouse on the death certificate; as a result, she was unable to obtain death benefits due her. Accordingly on March 1,

2016, Attorney Edmonds filed with the Probate Court a Petition for Adjudication as Surviving Spouse and Amendment of Death Certificate.

Deborah Harwell also filed certain creditor claims against the estate. The claims, however, were disallowed by Personal Representative Robert Bryan Harwell. Therefore, on March 9, 2016, in order to preserve those claims, Attorney Edmonds filed Petitions for Allowance of Creditor's Claims in Probate Court on behalf of Deborah Harwell.

In response to Edmonds' petitions, Respondent Robert Bryan Harwell requested that sanctions be imposed against Attorney Edmonds pursuant to Rule 11, SCRCP and filed claims under the South Carolina Frivolous Civil Proceedings Act (SCFCPA), S. C. Code §15-36-10, *et seq.*

D. Documents

For purposes of this opinion, I have reviewed the following documents and cases (including any exhibits incorporated therein):

Filings

1. Affidavit of Peter D. Protopapas (filed January 20, 2017 at 11:09 A.M.);
2. Order Granting Defendants Joshua S. Whitley's and Karen Whitley's Motion for Sanctions (filed October 24, 2016), Case No. 2015-CP-8-2380
3. Attorney Nancy Bloodgood's Motion for [Reconsideration] Pursuant to Rues 52 and 59 of the South Carolina Rules of Civil Procedure, Case No. 2015-CP-8-2380;
4. Plaintiff's [Amy Kovach's] Motion for Reconsideration and Memorandum in Support, Case No. 2015-CP-8-2380;
5. Affidavit of Christopher M. Kovach, Case No. 2015-CP-8-2380;

Books

1. Simon, Needham, and Powell, LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS (4th Edition 2009);
2. Morgan and Rotunda, PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS (10th Edition, 2008) pp. 382-388;
3. Hazard, Koniak, Cramton, and Cohen, THE LAW AND ETHICS OF LAWYERING (4th Edition, 2005), pp. 665-678.

Cases

1. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009).
2. *In re Beard*, 359 S.C. 351, 597 S.E. 2d 835 (Ct. App. 2004).
3. *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 635 (Ct. App. 2011).

4. *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (S.C. 2011).
5. *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 153 (4th Cir. 2002)

Accordingly, for the reasons more fully below, I have concluded with respect to both categories of issues that are central to Respondent's motion for sanctions—"the adjudication of surviving spouse/amendment of death certificate" issue and "the Creditor Claim Petition and publication cost"—that Attorney Edmonds exercised the duty of care applicable to an attorney litigating in the courts of South Carolina and in service to the people of this state. Attorney Edmonds did not, therefore, violate the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"), S.C. Code Ann. §15-36-10 or Rule 11 of the South Carolina Rules of Civil Procedure by improperly, handling, filing, representing, referencing, or taking any other actions based on or regarding:

1. the January 14, 2016 Statement of Creditor's Claims for $3.1 million based on a Prenuptial Agreement and for Obituary Costs;
2. the March 9, 2016 Petitions for Creditor's Claims on the Prenuptial Agreement and Obituary Costs;
3. the March 1, 2016 Petition for Adjudication as Surviving Spouse and for Amendment of Death Certificate;
4. the April 29, 2016 Amended Petition regarding Surviving Spouse, Amendment of Death Certificate and Attorneys' Fees; and

In carrying out her representation of Deborah B. Harwell, Attorney Edmonds exercised due diligence and care, and acted consistent with the fiduciary obligations owed Mrs. Harwell.

By her actions, therefore, Attorney Edmonds represented Mrs. Harwell with zeal and diligence and did not violate any statutory or regulatory mandate, rule of professional conduct, or duty of care or trust owed to the Respondent or the court. Thus, in carrying out Deborah B. Harwell's lawful objectives. Attorney Edmonds provided representation that was competent and diligent as normally exercised by lawyers in South Carolina in similar circumstances.

Finally, by way of full disclosure I advise that I am being compensated for my examination of the issues and my testimony in this case at the rate of $500 per hour. This compensation does not depend on the outcome of this litigation.

II. DISCUSSION OF OPINIONS

A. Factual Basis of Opinions

1. In establishing the factual basis for my opinion I have identified the basic facts from a combination of sources, including the following filings and pleadings growing out of the original Complaint, requesting a Decree of Separate Maintenance and Support filed by David W. Harwell on March 20, 2015. Those filings and pleadings include the Final Decree entered by Judge James A. Spruill, Judge of the Family Court for the Fifteenth Judicial Circuit, July 21, 2015; the Mediation Agreement (Docket No. 2015-DR-26-691), filed July 21, 2015; the Contempt Order entered by Judge Melissa J. Buchannon, Presiding Family Court Judge, July 20, 2016; the South Carolina Certificate of Death Worksheet, dated September 30, 2015, and the Affidavit of Peter D. Protopapas, filed January 20, 2017; a transmittal letter to Ms. Reel-Shearin from Attorney Barbara J. Wagner, dated July 18, 2016; the Third-Party Defendants Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds' Memorandum in Support of Motion to Dismiss (C/A No. 2016-CP-21-1435), signed by Barbara J. Wagner, dated July 18, 2016; the Third-Party Defendants Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds' Supplemental Memorandum in Opposition to Motion for Sanctions (No. 2016-CP-21-1435) unsigned/unsent; the Affidavit of Third-Party Defendant Deirdre W. Edmonds, signed July 15, 2016; the Order Granting Defendants Joshua S. Whitley's and Karen Whitley's Motion for Sanctions (Case No.:2015-CP-08-2380), issued by Jean H. Toal, Presiding Judge, Ninth Judicial Circuit, filed October 24, 2016; Bloodgood's Motion Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure (Case No.:2015-CP-08-2380), signed by Attorney Kathleen Fowler Monoc, dated November 7, 2016; Plaintiff's [Amy Kovach] Motion for Reconsideration and Memorandum in Support (Case No.:2015-CP-08-2380), signed by M. Dawes Cooke, Jr. and dated January 13, 2017; Affidavit of Christopher M. Kovach (Case No.:2015-CP-08-2380), dated January 13, 2017; and telephone communications with Attorney Barbara J. Wagner, and Attorney Deirdre W. Edmonds.

Finally, I understand the pertinent facts to be those that I set forth above in Part I, Section C. Because I have had to glean them from the record and discussions, however, it is possible that my opinion might change if presented with facts that I have not had an opportunity to consider. At the present, however, I offer these opinions with a high degree of certainty that my conclusions are correct.

B. Summary of Opinions

1. First, it is my ultimate opinion that Attorney Deirdre Edmonds carried out the representation of her former client, Deborah B. Harwell in an ethical and professional

manner. She acted reasonably and provided the standard of care and diligence usually exercised by attorneys in South Carolina. In filing pleadings and motions on Ms. Harwell's behalf, therefore, Attorney Edmonds did not violate any professional duty or fiduciary obligation owed to her client, opposing counsel, the court, or the public.

Designation as Surviving Spouse and Amendment of Death Certificate

2. Second, it is my opinion as regards the adjudication of surviving spouse/amendment of death certificate issues that Respondent's call for sanctions are without merit. That action is based on the grounds that, as Mr. Protopapas summarizes it, "[t]he March 1, 2016 Petition for Adjudication as surviving Spouse and For Amendment of Death Certificate and its April 29th Amendment contain frivolous, harassing, and improper allegations." Again, this claim is without merit and overwrought. Shorn of the drama of charge and counter-charge, the most informed thing that can be said about this issue is that nobody knows what the full and true facts are. The only facts that one can be certain of are two—and they are broad and contradictory. The first is that Attorney Edmonds relied on her personal knowledge of more than two decades in combination with a personal conversation with Angelia Saleeby, DHEC Director of Vital Records Division, as a basis for concluding that it was the responsibility of the Informant of an estate to provide information "required on the death record for filing purposes, and the funeral home is responsible for filing the death record." *Third-Party Defendants . . . Supplemental Memorandum in Opposition to Motion for Sanctions* at 4. The second reliable fact—if Respondent can be taken as in agreement with Mr. Protopapas' Affidavit—is that Robert Bryan Harwell takes extreme exception to the allegation that he mishandled death-notice communications for the Harwell estate. In his view "Ms. Edmonds' conclusion was frivolous because by statutory mandate, the Funeral Home communicates with DHEC, not the Personal representative." Thus, the Funeral Home or DHEC, but not Respondent, must have miscommunicated the death certificate information.
3. Amid the partisan finger pointing, accusations, denials and counter-charges it should be increasingly clear that even a close reading of this record cannot bridge the factual gaps or salve the wounds of the parties to this litigation. Mr. Protopapas underscored for the Respondent that "by state mandate, the Funeral Home communicates with DHEC, not the Personal Representative." And Attorney Edmonds stresses that "an Informant provides information required on the death record for filing purposes and the funeral home is responsible for filing the death record." Sadly, neither party seems to have focused on the fact that both statements can be true, so that as a consequence neither resolves the key

issues of where and by whom the miscommunication about the surviving spouse was made. The third-party defendant is focused on the beginning of the chain; the Respondent on the end.

4. Fortunately to resolve the question whether sanctions are warranted against Attorney Edmonds under Rule 11 of the South Carolina Rules of Civil Procedure or the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, does not require this mystery to be resolved. Rather, what is required is understanding that the criteria for SCRCP 11 sanctions "are essentially the same" as those for sanctions under the Act: *In re Beard,* 359 S.C. 351, 597 S.E. 2d 835 (Ct. App. 2004). The revisions to the FCPSA created a "reasonable attorney" standard to answer that question. *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 635 (Ct. App. 2011). "While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is so patently without merit that no reasonable attorney could have a good faith belief in its propriety." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (S.C. 2011).

5. As the court recognized in *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 153 (4th Cir. 2002) (internal citations omitted) (emphasis added):

> [M]aintaining a legal position to a court is only sanctionable when, in "applying a standard of objective reasonableness, it can be said that a reasonable attorney in like circumstances could not have believed his actions to be legally justified." That is to say, as Judge Wilkins recently explained, the legal argument must have "absolutely no chance of success under the existing precedent." Although a legal claim may be so inartfully pled that it cannot survive a motion to dismiss, such a flaw will not in itself support Rule 11 sanctions—**only the lack of any legal or factual basis is sanctionable.** We have aptly observed that "[t]he Rule does not seek to stifle the exuberant spirit of skilled advocacy or to require that a claim be proven before a complaint can be filed. The Rule attempts to discourage the needless filing of groundless lawsuits." And we have recognized that "[c]reative claims, coupled even with ambiguous or inconsequential facts, may merit dismissal, but not punishment."

6. It was manifestly reasonable in the instant case, therefore, for Attorney Edmonds to assert responsibility on the part of the Respondent, when she came to that conclusion based on years of personal practice in the Probate Court and confirmed her assessment of the procedural process by interviewing one of DHEC's responsible staff members. It was reasonable to allege, subject to discovery, that the Informant had submitted false information for the death certificate. And her case was only strengthened when that same DHEC staffer stated later in an affidavit that when the space for the name of the surviving spouse is left blank at the time of filing, the designation "NA" is automatically printed on

the death certificate. That confirmed that neither the funeral home nor DHEC had an interest in the substantive content of the death certificate—only its processing.

7. Accordingly, whether one agrees with Edmonds' litigation strategy or not, sanctions under either Rule 11 of the South Carolina Rules of Civil Procedure or the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 are not warranted. On these facts it is impossible to meet Judge Wilkins' test and say as a matter of law "a reasonable attorney in like circumstances could not have believed his [or her] actions to be legally justified." And remember, too, that not only was there a factual basis for the claim at the time the Complaint was filed, but that her assertiveness eventually allowed her to prevail on the issues she raised. Respondent inexplicably consented to the remedy she had sought, designating her client the surviving spouse and amending the death certificate.

Petitions for Allowance of Creditor's Claims/Claims on the Prenuptial Agreement and the Costs for the Obituary.

8. Third, it is my opinion as regards the petitions for allowance of creditor's claims that Respondent's request for sanctions is without merit. Respondent's request rests on the assertion that—as Mr. Protopapas summarizes it: "[The] March 9, 2016 Petition for Creditor's Claims on the Prenuptial Agreement and Obituary Costs . . . was frivolous because they were precluded by prior Court Order." Affidavit of Protopapas at 12.

9. Respondent Harwell's requests for sanctions fall short because he reads The Frivolous Proceedings Act too narrowly. Due is not given to the fact that the Act is legislation that deals with litigation. Such laws are not intended to punish opposing parties, but to deter individuals from misusing the adversarial process while preserving the right to contend through litigation when justice requires it. *Hunter v. Earthgrants Co. Bakery*, 281 F.3d 144, 151 (4th Cir. 2002) (applying Rule 11 of the FRCP).

10. The balance to be struck is like that under South Carolina Rules of Professional Conduct, SCRPC 3.1, "Meritorious Claims and Contentions." It provides that "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

Comments [1] and [2], then, further explain that:

> [1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. . . . However, the law is not always clear and never is static. Accordingly, in determining the proper

scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous; however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by good faith argument for an extension, modification or reversal of existing laws.

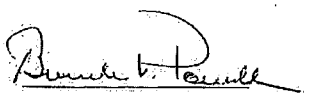
11. Considered in the fuller light of Rule 3.1, therefore, it is insufficient to urge as the Respondent, in effect, does: that the mere existence of a Mediated Agreement approved by Order of the Family Court meant that "both parties waive[d] any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other." Protopapas Affidavit at 13. Neither the Creditor's Claims on the Prenuptial Agreement or the Costs for the Obituary were made sacrosanct if, for instance, the lawyer expected to develop vital evidence through discovery and further investigation—and that would be so even if the lawyer actually believed that the client's position ultimately would not prevail.[1]
12. Attorney Edmonds advised me that based on discussions with her client about possibly undisclosed assets, she had a good faith belief that another look at David W. Harwell's financial holdings was possible. In addition, as Attorney Edmonds has previously stated, she believed in good faith that the time constraints under which she was representing Mrs. Harwell required her, to assert some claims in order to preserve the record even though doing so was counter to the Mediation Agreement.
13. Attorneys, and their clients, are afforded wide leeway in bringing an action that in the end might not be legally or factually supportable. Moreover, the decision whether to award sanctions pursuant to Rule 11 or the FCPSA is treated as one in equity. *S.E. Site Prep, LLC v. Atl. Coast Builders & contractors*, LLD, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011).

[1] Remember, too, that the doctrine of collateral estoppel should not be rigidly or mechanically applied. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009) (internal citations omitted).

II. CONCLUSION

Having reviewed relevant portions of the record in this consideration of sanctions, I am of the opinion that it reveals no breach of duty, violation of ethical rules, or violation of fiduciary responsibilities by Attorney Deirdra W. Edmonds.

I reserve the right to modify, supplement, or add additional opinions based on further factual developments and analysis.



Burnele V. Powell
Miles & Ann Loadholt
Professor of Law, Emeritus
University of South Carolina
School of Law
Columbia, South Carolina

January 31, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2016-CP-21-01435
	)	
Deborah B. Harwell,	)	
	)	
Petitioner	)	
	)	
v.	)	AFFIDAVIT OF MITCHELL C. PAYNE
	)	
Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health And Environment Control Division of Vital Records,	)	
	)	
Respondent	)	
	)	
v.	)	
	)	
Law Office of Deirdre W. Edmonds, P.A., and Deirdre W. Edmonds, Individually,	)	
	)	
Third Party Defendants	)	

FILED
2017 FEB -2 AM 2:50
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

COMES NOW Mitchell C. Payne, who appeared before the undersigned Notary Public, and upon being duly sworn, states the following:

My qualifications for giving expert testimony in this matter are as follows:

A. I am an attorney licensed to practice law.
B. I have been licensed to practice in the State of South Carolina since 1984.
C. My practice focuses on Wills, Trusts, Probate, Estate Administration, and Elder Law.
D. I have practiced in those areas of law for over 25 years.
E. I have participated in several CLEs on Probate Law.

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

F. I was a member of the Probate Code Revision Committee of the Probate, Estate and Trust Section of the South Carolina Bar.

G. I believe I am familiar with the standard of care applicable to attorneys practicing in the field of Probate Law.

BACKGROUND

I have been asked to review and give my assessment of the Affidavit of Peter D. Protopapas, dated January 19, 2017, as it relates to the Respondent's (Referred to as Defendants in the Affidavit) request for sanctions against Third Party Defendants. I will restrict my comments to that request. In connection with the forgoing I have been provided with, the Affidavit of Peter D. Protopapas, the Rebuttal Affidavit of Deirdre Edmonds, Third Party Defendants Memorandum in Support of Motion to Dismiss, and Third Party Defendants Memorandum in Opposition to Motion for Sanctions. I have also discussed this case with Deirdre Edmonds.

FACTS

On or about January 4, 2016, Petitioner filed a Creditor Claim in the Estate of David W. Harwell. Respondent filed a Notice of Disallowance of Claim. Subsequent to the filing of Respondents Notice of Disallowance of Claim, Petitioner met with Third Party Defendant, Deirdre Edmonds, to discuss her case. On or about March 1, 2016, Ms. Edmonds filed a Petition for Adjudication as a Surviving Spouse and for Amendment of Death Certificate (the March 1 Petition). On or about March 9, 2016, Third Party Defendant, Deirdre Edmonds filed a Petition for Allowance of Creditor Claim in connection with Petitioners January 4 Claim (the March 9 Petition). On or about April 29, 2016, Third Party Defendant, Deirdre Edmonds, filed an Amendment to the March 1 Petition. Third Party Defendants subsequently withdrew from Representation of Petitioner.

Respondents have requested that this court impose Sanctions on Petitioner and Third Party Defendants, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, ("SCRCP"), and under the South Carolina Frivolous Civil Proceedings Act ("SCFCPA"), SC Code § 15-36-10, et seq. As to Third Party Defendants, the request relates to the filing of the March 1, Petition and the March 9, Petition.

APPLICABLE LAW

I will not reiterate the applicable statutory law and Rules of Court. I do not disagree with Mr. Protopapas' statement of those laws. I do however disagree with the application of those laws and rules to the facts in this case.

Mr. Protopapas contends that sanctions should be imposed on Third Party Defendants in connection with the March 1 Petition. He cites as the basis for that assessment that the Petition contains allegations that have no basis in fact. While one may debate whether all of the allegations within the Petition could or could not be proven, that is not sufficient for the application of sanctions.

Section S.C. Code § 15-36-10 A (4) provides that sanctions may be imposed for the filing of a frivolous pleading or motion if any of the following elements are present:

i. The person has not read it;

ii. A reasonable attorney would believe it was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law;

iii. A reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation or defense was intended to merely harass or injure the other party; or

iv. A reasonable attorney presented with the same circumstances would believe the pleading, motion or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing property discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

In this case, these elements are not present in regard to the March 1 Petition. The facts in this case show that Ms. Harwell is the Surviving Spouse of David Harwell; and that Mr. Harwell's Death Certificate did not reflect that fact. Consequently, Ms. Harwell is clearly entitled to the remedy she seeks in this Petition. As Mr. Protopapas said in his affidavit, "An action is frivolous . . . if the lawyer is unable to . . . make a good faith argument on the merits of the action taken." Petitioner absolutely has a good faith argument that she is entitled to the remedy sought in the Petition. The fact that she may not ultimately be able to prove all the

allegations in the Petition does not make the action frivolous. In fact that is the case in many actions. If the allegations that can be proven are sufficient for the Petitioner to prevail, the action is not frivolous.

Mr. Protopapas further states that sanctions are appropriate because Third Party Defendants had other options for correcting Mr. David Harwell's Death Certificate. However, in her rebuttal affidavit, Ms. Edmonds states that she tried the other options and was unsuccessful. Further, the SCFCPA does not require a litigant or his counsel to use other means to achieve their goal. If the goal can be achieved through the legal action brought, the action is not frivolous. Since the March 1 Petition does not advance a frivolous case, sanctions are not appropriate.

Mr. Protopapas contends that sanctions should be imposed on Third Party Defendants in connection with the March 9 Petition. He cites as the basis for this position, that the Petition lacks merit. In asserting the Petition lacks merit, he relies on a Family Court Order, approving the July 21, 2015, mediated settlement agreement. However, at the time the Third Party Defendants filed the March 9 Petition, additional facts existed which Mr. Protpapas ignores. As Ms. Edmonds sets forth in her rebuttal affidavit, Ms. Harwell, had advised Ms. Edmonds she intended to bring an action to have the Family Court Order overturned. Ms. Edmonds advised Ms. Harwell that she would need to engage other counsel for that action.

An attorney has the right to rely on representations by his client. In the case at hand, Ms. Harwell advised Ms. Edmonds that she had a good faith basis for seeking to have the aforementioned Family Court Order overturned. Ms. Edmonds was justified in relying on that assertion. This is addressed specifically, in footnote 3 of *Ex parte Gregory 378 SC 43.* In that case Justice Pleicones expressed concern that the court was imposing on attorneys a new duty to independently investigate cases prior to bringing a legal action on behalf of a client. In footnote 3 to the Supreme Court's decision in the matter, Justice Moore made it clear that was not the case, by stating as follows:

> "The concurrence indicates that we have imposed an additional duty upon an attorney by creating a blanket rule that an attorney is precluded from obtaining a reasonable belief in the merits of a case based solely on information related to him by a client. However, we have not created such a blanket rule. Our conclusion that

an attorney must conduct a reasonable investigation beyond what is related to the attorney by his client is limited to the situation where a client is alleging conversion against his or her former attorney for misappropriation of client funds or legal malpractice."

In this case, the deadline to respond to Respondent's Notice of Disallowance of Claim, was approaching. Had the deadline passed, Ms. Harwell, would have lost any rights she had to assert a claim against David Harwell's estate; including the possibility of overturning the aforementioned Family Court Order. Under the circumstances, I believe Ms. Edmonds acted prudently in taking action to preserve Ms. Harwell's rights.

Mr. Protopapas again states that Ms. Edmonds had other options, including allowing Ms. Harwell to proceed pro se. This option would not have been in Ms. Harwell's best interest. A pro se action is far less likely to prevail than an action where the litigant is represented by counsel. In this case, Ms. Harwell's rights would most likely have been lost had Ms. Edmonds not acted to preserve them.

Finally, the SCFCPA identifies several mitigating factors to consider prior to awarding sanctions. Mr. Protopapas identifies those in his affidavit. Among those factors two are particularly relevant in this case; namely, the complexity of the Claim and the length of time available to the Attorney. Mr. Protopapas asserts that this case is not complex. However, that position is not born out by the facts in this case. As Ms. Edmonds points out in her rebuttal affidavit this case involves actions in three courts. Ms. Edmonds advised Ms. Harwell that she should seek counsel from a Family Court lawyer regarding overturning the Family Court Order. Clearly, this case was more complex than most Probate Court lawyers would handle without assistance.

Given that the Respondent had filed a notice of Disallowance of Claim, Ms. Harwell had a very limited time to respond. There was no time to consult with other counsel prior to the running of the time to respond to the Notice of Disallowance of Claim. Therefore, Ms. Edmonds was prudent in moving to protect the rights of her client, and allow her client time to attempt to have the Family Court order overturned.

In conclusion, I do not believe that either of the Petitions filed by Third Party Defendants, were frivolous at the time they were filed. Therefore, the imposition of sanctions would be improper. It is in the interest of justice that the attorneys of this state not refuse to take cases because of the power and influence of a party on the other side. It is important that attorneys be confident that when they stand up for their clients and advance their causes, the Court will not be swayed by who the parties to the litigation are. Therefore, when the court is considering sanctions against an attorney, in a controversial case, involving a prominent well connected adversary, it should proceed with great caution. I believe in this case caution is warranted.

FURTHER AFFIANT SAYETH NOT.

Mitchell C. Payne

Sworn to and Subscribed before me

this 31st Day of January, 2017

Notary Public for South Carolina

My Commission Expires: May 3, 2021