

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge **MAR 14 2019**

**SC Court of Appeals**

APPELLATE CASE No.: 2019-000358  
ADMINISTRATIVE LAW COURT CASE No.: 16-ALJ-07-0386-CC

Trident Medical Center, LLC, d/b/a Trident Medical Center,.....Respondent,

v.

South Carolina Department of Health and Environmental Control,  
and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley County,.....Respondents below,

Of Which Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley County is the.....Appellant.

**APPELLANT’S MOTION TO ASCERTAIN ORDER FOR APPEAL,  
EXTEND TIME FOR INITIAL FILINGS AND CORRECT CAPTION**

Appellant Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St. Francis Hospital – Berkeley, respectfully submits this Motion pursuant to Rule 240, SCACR, to establish which of two Orders issued by the Administrative Law Court (“ALC”) is the final order for purposes of this appeal and asks this Court to extend the initial filing deadlines pending the Court’s ruling and to correct Appellant’s identification in the caption. The grounds for this Motion are as follows:

1. On December 3, 2018, the ALC issued its Final Order in the underlying contested case proceeding, which order was attached to Appellant’s Notice of Appeal filed March 6, 2019.

2. The Rules of Procedure for the Administrative Law Court (“RPALC”) set a specific timeline for the disposition of a motion asking for reconsideration of a final decision, which in pertinent part provides:

**D. Motion for Reconsideration.** Any party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:

(2) The administrative law judge shall act on the motion for reconsideration within thirty (30) days after it is filed if an opposing party does not file a response or within thirty (30) days after an opposing party files response. *If no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion.*

(4) The time for appeal for all parties shall be stayed by a timely motion for reconsideration, and shall run from receipt of an order granting or denying such motion. *If no order is filed regarding the motion, the time for appeal shall begin to run thirty (30) days from the date the motion is deemed denied pursuant to subsection (D)(2).*

The filing of a motion for reconsideration is not a prerequisite to filing a notice of appeal from a final decision of an administrative law judge.

*See* Rule 29(D), RPALC (emphasis added).

3. The timeline related to the Appellant’s Motion asking for reconsideration of the Final Order is as follows:

- (a) Final Order issued December 3, 2018.
- (b) Motion to Alter or Amend filed December 13, 2018.
- (c) Respondent Trident Medical Center, LLC’s (“Trident”) Response opposing the Motion filed January 7, 2019.
- (d) Appellant’s Reply in further support of the Motion filed January 14, 2019.
- (e) Respondent Trident’s Sur-Reply filed January 18, 2019.
- (f) Amended<sup>1</sup> Final Order issued February 21, 2019.

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<sup>1</sup> Appellant respectfully notes that the title of the document includes a typographical error and reads “AMENENDED FINAL ORDER” but Appellant refers to the Order herein as the Amended Final Order.

4. Appellant filed the Notice of Appeal in this Court on March 5, 2019, and included therewith both the December 3, 2018 Final Order and the February 21, 2019 Amended Final Order. Appellant filed both Orders issued by the ALC in an abundance of caution pending this Court's confirmation of which Order is the final order for purposes of appeal.

5. Appellant is informed and believes that Rule 29(D), RPALC, required a ruling by the ALC on the Motion by February 6, 2019, which date is thirty (30) days from the response filing by Respondent Trident opposing the Motion. *See* Rule 29(D)(2), RPALC. Because the ALC did not act on the Motion by February 6, 2019, based on the procedural rule of the ALC, the Motion was deemed denied and the Final Order issued December 3, 2018 is the final order on which Appellant must base this appeal. As such, the time for appeal began to run on February 6, 2019, requiring a Notice of Appeal to be filed by March 8, 2019.

6. In the Statement of the Case for the Amended Final Order, the ALC identified the entry of the Final Order and the filing of the Motion to Alter or Amend by Appellant, and without any indication of a ruling on the Motion, summarily states: "The Court substitutes this Amended Final Order for its previous Order." (Am. Final Order, 2). It appears to be a novel question whether the ALC retains jurisdiction to *sua sponte* issue a substitute order after a motion seeking reconsideration has been deemed denied by Rule 29(D)(2), RPALC. *Compare Leviner v. Sonoco Products Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) (holding *sua sponte* order issued more than thirty days after form order issued was well outside the ten day period provided under Rule 59(e), SCRCP, and was therefore void), *and Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001) (holding Family Court lacked authority to alter or amend judgment, *sua sponte*, after the ten days provided by Rule 59(e), SCRCP).

7. Appellant files this Motion to ascertain the Court's position on the operation of Rule 29(D)(2), RPALC. Appellant submits that if the ALC retained such authority to issue, *sua sponte*, a substitute order after the Motion to Alter or Amend was deemed denied, then the final order for purposes of appeal is the Amended Final Order issued February 21, 2019. If the ALC lacked such authority, then final order for purposes of appeal is the Final Order issued on December 3, 2018. Regardless of which is the final order, Appellant submits that the filing of the Notice of Appeal on March 5, 2019 was within the time prescribed by the applicable procedural rules for either Order.


8. For the benefit of all parties to this appeal and in furtherance of judicial economy, Appellant asks this Court to identify which Order is the final order for purposes of briefing and argument in this proceeding. Appellant consulted with both Respondents prior to filing this Motion and neither party had any objection to this identify the order for appeal.

9. As related relief, Appellant respectfully requests that the Court extend the deadline for filing of the Initial Brief and Designation of Matter to be Included in the Record on Appeal until thirty (30) days after the Court rules on this Motion and identifies the appealable order. Respondents similarly had no objection to Appellant's request for the extension of time pending the Court's ruling.

10. Finally, Appellant asks that the Court's caption be corrected to remove a typographical error in the caption of the ALC's Amended Final Order. In the Amended Final Order issued February 21, 2019, the document incorrectly includes the word "County" in the caption identifying Appellant. As accurately identified in the Statement of the Case at page 1 of the Amended Final Order, and accurately identified in the caption of the Final Order issued

December 3, 2018, Appellant is properly identified as Roper St. Francis Hospital – Berkeley, Inc., d/b/a roper St. Francis Hospital – Berkeley.

Respectfully submitted,



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*Attorneys for Appellant  
Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley*

March 14, 2019  
Columbia, South Carolina

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

APPELLATE CASE No.: 2019-000358  
ADMINISTRATIVE LAW COURT CASE No.: 16-ALJ-07-0386-CC

Trident Medical Center, LLC, d/b/a Trident Medical Center,.....Respondent,

v.

South Carolina Department of Health and Environmental Control,  
and Roper St. Francis Hospital – Berkeley, Inc., d/b/a Roper St.  
Francis Hospital – Berkeley County,.....Respondents below,

Of Which Roper St. Francis Hospital – Berkeley, Inc., d/b/a  
Roper St. Francis Hospital – Berkeley County is  
the.....Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on March 14, 2019, she caused a copy of the Motion to Ascertain Order for Appeal, Extend Time for Initial Filings and Correct Caption to be served on all parties of record by hand delivering a copy of the same, addressed as follows:

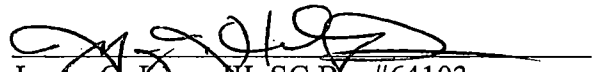
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Francis Hospital – Berkeley*

Jennifer J. Hollingsworth  
Member  
Admitted in SC

March 14, 2019

**RECEIVED**  
MAR 14 2019  
SC Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court, Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *Trident Medical Center, LLC, d/b/a Trident Medical Center  
vs. South Carolina Department of Health and Environmental  
Control, and Roper St. Francis Hospital – Berkeley, Inc.,  
d/b/a Roper St. Francis Hospital – Berkeley County*  
Appellate Case No.: 2019-000358

Dear Ms. Kitchings:

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

Enclosed please find an original and seven (7) copies of *Appellant's Motion to Ascertain Order for Appeal, Extend Time for Initial Filings, and Correct Case Caption* in the above captioned matter to be clocked and filed, together with a Proof of Service. Please return a file-stamped copy of each document to me via our courier. I have also enclosed our check in the amount of \$50.00, which represents the filing fee for the same.

As background, this Motion is being filed following a discussion with your office regarding the uncertainty of which of two Orders issued by the lower court is subject to appeal. I conferred with counsel for both Respondents prior to filing and they had no objections to the relief sought. Because the transcript from the final hearing is already in the possession of the parties and does not need to be ordered, the Motion also asks for an extension of the initial filing deadlines under Rule 208 and Rule 209, SCACR.

By copy of this letter, I am hereby serving a copy of the same on counsel of record. Please contact me if your office has any questions related to these filings.

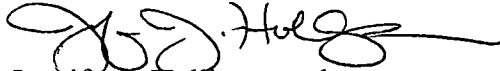
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✓

The Honorable Jenny Abbott Kitchings  
March 14, 2019  
Page 2

With highest regards,



Jennifer J. Hollingsworth

JJH/llt  
Enclosures

cc: William R. Thomas, Esquire (*Via Hand-Delivery*)  
Ashley C. Biggers, Esquire (*Via Hand-Delivery*)