

THE STATE OF SOUTH CAROLINA

In The South Carolina Supreme Court

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MAR 06 2020

Appellate Case No. 2019-002089

S.C. SUPREME COURT

Appeal from Richland County
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

Estate of Edward James Mims by Laura M.
Cole, Personal Representative,
Petitioner,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
and

Henry D. McMaster, in his capacities as Governor
of the State of South Carolina and Chair of the
State Fiscal Accountability Authority,
Respondents.

APPENDIX VOLUME I

PETITION FOR WRIT OF *CERTIORARI*, *MAMDAMUS* OR *SUPERSEDEAS*

Patricia Logan Harrison
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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2019-001552

Circuit Court Case No. 07-CP-40-3365

Estate of Edward James Mims, Laura M.
Cole, Personal Representative,
Appellant,

v.

The South Carolina Department of Disabilities
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RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Background

This action was brought by Edward Mims who is now deceased and who was a former resident of a facility under the control of the South Carolina Department of Disabilities and Special Needs (DDSN), against the agency and its

former director and associate state director. See, *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 811 S.E.2d 807, 422 S.C. 388 (S.C. App., 2017) and *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (S.C., 2012).

This response is made to the motion to dismiss filed by Respondents' counsel on September 23, 2019 and received by Petitioner's counsel on September 27, 2019.

Respondents had not taken any depositions when this decade-old case appeared as number two on the trial docket two months after this Court remitted the case to the trial court in 2018. In response to Respondents' motion for a continuance, the circuit court issued a scheduling order on October 8, 2018, setting a deadline of ninety days to complete discovery. A second amended scheduling order was issued on December 6, 2018, providing Respondents an even more generous extension of the deadline for discovery, until March 1, 2019. The discovery schedule was again extended by order of the chief administrative judge on March 22, 2019, requiring discovery to be completed by May 31, 2019. Exhibit 1.

When the time for discovery expired, Petitioner agreed to allow Respondents to depose expert witnesses not previously deposed, upon the condition that prior arrangements be made to pay those witnesses' fees and travel costs. Exhibit 4.

Respondents declined and refused to make prior arrangements to pay fees and costs of those experts. Exhibit 5.

After the close of discovery, Respondents mailed the subpoenas attached as Exhibit 2 to five non-party witnesses. These subpoenas were extremely onerous and required the non-party witnesses to answer questions and to locate documents more than a decade old, many of which were already in the possession of DDSN.

Response to Respondents' "Facts and Procedural History"

Initially, Petitioner disputes the allegations contained in Respondent's "Facts and Procedural History," which are not supported by the record in this case.

Petitioner calls the attention of the Court to the March 22, 2019 order of Chief Administrative Judge Jocelyn Newman, **entered by consent of all parties**, which paints a very different picture of Petitioner's responses to Respondents' discovery demands:

Defendants have noticed over a dozen depositions since December and the Plaintiff has supplemented discovery responses at the request of the Defendants. The parties have in good faith attempted to comply with this Court's scheduling order but have been unable to complete them in a timely fashion.

Exhibit 1.

DDSN is governed by a board of unpaid volunteers appointed by the Governor, upon advice and consent of the Senate, as required by S.C. Code Ann. §

44-20-210. The statute requires each of the seven congressional districts in the state to be represented. Exhibit 11. Respondents' allegations of dilatory conduct by Petitioner are also contradicted by the statement of former DDSN Commissioner Deborah McPherson, who served on the governing board of DDSN from 2009 until 2014. Exhibit 7. McPherson was one of two former DDSN Commissioners who received these subpoenas after the close of discovery. Prior to the issuance of the subpoenas, Respondents had deposed McPherson on February 22, 2019. Id. at ¶¶ 3-7. McPherson complained in her statement that questioning of Respondents' counsel at that deposition "rose to the level of harassment when he did not get the answers he wanted." McPherson informed the trial court in her statement that:

8. Although I was identified as a witness many years ago, before my appointment to the Commission, DDSN never made any attempt to obtain the information they now demand.
9. Indeed, as Commissioners, we were kept in the dark about litigation and when the Davidson firm did meet with Commissioners to review legislation, we were not provided with an accurate assessment of cases, based on my later knowledge of how the cases were resolved by the Courts.
10. It is common knowledge in the disability community in South Carolina that this law firm will drag out cases and try to starve out plaintiffs by driving up litigation costs and delaying trials, forcing families to give up or to settle for less than the case is worth.

Exhibit 7. Ms. McPherson also informed the trial court that:

14. It is difficult enough already for plaintiffs to locate witnesses who have personal knowledge about the operations of DDSN programs, not only because of their limited financial circumstances and the years-long delays caused by this law firm, but also because of the

history of retaliation against persons who testify or provide affidavits in legal cases.

Exhibit 7. (Emphasis added.)

The subpoenas required the witnesses, including the two former Commissioners who had donated their time as non-paid volunteers on the governing board of the agency for a total of nine years, to cite to chapter and page of any authority upon which they might base their opinions and required production of:

11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.

Respondents also demanded copies of electronic records more than a dozen years old, including records that were stored in a not-presently recoverable computer format. Exhibit 7. (Statement of Lennie Mullis.)

Petitioner provided Respondents with the written objections signed by the non-party witnesses. Respondents' counsel responded that "Subpoenas to non-parties are not governed by the Discovery deadlines..." and filed a motion to compel. Exhibit 5. Petitioner filed a motion for a protective order and other relief. Exhibit 3. Without addressing the objections of the non-party witnesses in any way, Respondents then caused process servers to personally serve these subpoenas

at the homes of the witnesses. Petitioner then filed a supplemental motion to for a protective order and other relief, also asking the trial court for an order protecting the non-party witnesses from retaliation by Respondents and that Respondents make prior arrangements to pay the experts' fees and travel costs. Exhibit 6. Petitioner also requested that the trial court order the chairman of the DDSN Commission to attend the mandated mediation.

The trial court failed to address the objections of the non-party witnesses, ordering them to comply with the subpoenas within fifteen days and denying Petitioner's motion and did not require a member of the governing board to be present at mediation, or require Respondents to make prior arrangements for payment of travel costs and fees.

After these subpoenas were served on these former members of the governing board of DDSN and a provider of psychological services to Medicaid clients, three then-current DDSN Commissioners tendered their resignations, leaving the agency without a quorum to conduct business. Exhibit 11. No votes could be taken at the August meeting due to lack of a quorum and the September, 2019 meeting was cancelled. Critical issues not only related to this lawsuit, but those affecting thousands of families and providers are at issue here. DDSN directives prohibit the director from approving contracts over \$200,000. There is

not a quorum to approve any offer of settlement of this case. Until the issue of the legitimacy of the resignations is addressed, the agency will remain in limbo. If contracts are approved without Commission approval, actions are taken affecting providers (such as “unfreezing” a provider with a history of abuse of clients) and budgets are submitted to the General Assembly that have not been approved by the governing board, the agency will be subjected to endless litigation.

The South Carolina Attorney General issued an opinion on September 24, 2019 that these resignations were ineffective, and that DDSN Commissioners are required to serve until their successors are appointed and qualified. Exhibit 12. However, as of October 3, 2019, the positions of four of the seven Commissioners required by statute are listed on the DDSN website as “vacant” more than a week after the Attorney General issued its opinion finding that the resignations were ineffective. *Id.*

This Court may take judicial notice, pursuant to Rule 201, SCRE of minutes from DDSN Commission meetings in 2019 which document that the governing board has not at any time during the year gone into executive session to discuss legal matters. Exhibit 13. Thus, it appears that the subpoenas were issued without authorization from the governing board of DDSN, and that Respondents’ motion to dismiss was filed by counsel without authorization from that board. Exhibit 13.

Issue Before the Court

The sole issue now before this Court is whether the trial court's discovery order is reviewable. The Petitioner recognizes that appellate courts' "willingness to review a discovery order" by way of an appropriate writ "will be as rare as the proverbial 'hen's tooth.'" *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control*, 692 S.E.2d 920, 924, 387 S.C. 380, 388 (2010). This case, which was filed in 2007 by an impoverished, severely disabled plaintiff, who was severely abused in a DDSN facility and involves former members of the governing board of that agency who are being harassed by oppressive subpoenas issued by counsel for the agency after the close of discovery, constitutes such a rare case.

Rather than asking the appellate courts of this State to "micromanage discovery orders," Petitioner urges this Court to "speak to trial courts generally" regarding the concern that "'discovery practice' has become a cottage industry and the merits of a claim are being relegated to a secondary status." *Id.* at 388.

The Petitioner recognizes that a trial judge's rulings on discovery matters will not be disturbed by an appellate court "absent a clear abuse of discretion." *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (citing *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989)). However, a writ may be issued by

an appellate court to review a discovery order “where exceptional circumstances exist.” *Id. at 577, 683 S.E.2d at 498* (citing *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.2d 154 (2009)). Exceptional circumstances exist in the challenge of the Estate of Edward James Mims to the discovery orders issued by the Richland County Court of Common Pleas, which includes gross abuse of discovery rules. Important issues were also raised in the trial court below regarding the relationship between taxpayer-funded private practice counsel and the authority of the governing body to direct their own legal representation.

As stated above, the Petitioner is “keenly aware that the scope of discovery is broad” in South Carolina. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Envtl. Control, Supra*. However, there are limits to the exercise of that discretion. The Supreme Court has complained that trial courts have been “generally unwilling to recognize and enforce” those limits. *Id.* As in *Oncology*, the discovery demands in this case have been “abusive and beyond the pale,” particularly as they relate to the oppressive discovery demands directed at former members of the governing board of the South Carolina Department of Disabilities and Special Needs which are intended to harass them and to chill their testimony. *Id.*

Since these subpoenas were issued three more DDSN Commissioners

resigned from the governing board of the agency. Enforcement of the subpoenas would prevent citizens from providing voluntary service to that governing board and would chill those Commissioners who serve and DDSN providers like Lennie Mullis, from challenging actions taken by the director. Allowing the lower court to force former Commissioners to comply with Respondent's late-filed burdensome subpoenas would surely exacerbate the problem of finding qualified candidates to serve on the governing board, which at present does not even have a quorum and prevent qualified providers from serving DDSN clients.

The issues Petitioner raises are of tremendous public importance. It is clear that the subpoenas, which were served after the discovery deadline, demanding that two former DDSN Commissioners produce records more than a decade old and subjecting them to risk of contempt of court, were not authorized by the governing board of the agency, as no executive session was held to discuss legal matters during 2019. The motion to dismiss was filed when the agency was without a quorum to authorize the filing. Exhibit 13. This appeal will allow the appropriate appellate court to send a message to trial courts regarding the importance of scheduling orders and that they must "impose reasonable discovery limits" by not allowing discovery "that exceeds that permitted by the rules of procedure." *Id.*

An order affects a substantial right and is immediately appealable when it

"(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]" Section 14-3-330(2). *Hagood v. Sommerville*, 607 S.E.2d 707, 362 S.C. 191 (2005). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review **usually** is considered an interlocutory order from which no immediate appeal is allowed. *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002). (Emphasis added.) But, there are exceptions to this general rule and this case presents exceptional circumstances warranting an exception.

In *Hagood*, a plaintiff bicyclist appealed a trial court's interlocutory order which required him to either get a new expert or get new counsel in his case against the defendant driver. The trial court determined that because the expert was employed full-time by the bicyclist's attorney as a professional investigator and accident reconstruction expert, the expert could not testify. The issue was whether the order was immediately appealable. The trial court gave the bicyclist two options: (1) do not use the expert as a witness, but find another expert witness and proceed to trial with his attorney or (2) the attorney had to withdraw due to the disqualification, and the bicyclist could retain new counsel, and use the expert

witness at trial. When the bicyclist's attorney withdrew, the bicyclist argued the order was immediately appealable under S.C. Code Ann. § 14-3-330(2) (1976) because it affected a substantial right, namely, the right to proceed with a lawyer of his choosing. The appellate court held that not only was the order immediately appealable, but it had to be immediately appealed in order to preserve the error.

Here, if Petitioner did not appeal this order, his right to appeal the issues raised in this case would be lost. Normally, a non-party witness has only two alternatives. *Ex parte Whetstone*, 347 S.E.2d 881, 289 S.C. 580, fn 3 (S.C., 1986). She may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after being held in contempt for her failure to comply. *Id.* But *Whetstone* did not address the substantial right of the **plaintiff** when his witnesses are subjected to abusive discovery tactics. The rule in *Hagood* should be applied here, where the plaintiff will be forced to locate other witnesses willing to subject themselves to such discovery demands, if any such witnesses can be found after more than a decade of litigation.

Enforcement of the lower court's order would affect a substantial right of Petitioner, who risks the loss of some if not all of his expert witnesses and who has a substantial right to have litigation decisions made by the governing board of the

agency that provided him services, rather than former officials who may have a conflicting interest from the best interests of the agency. Petitioner filed this lawsuit in 2007 and filed an amended complaint in 2008, incurring already the costs of two appeals. Further delay and being required to find other experts if the witnesses are forced to comply with the subpoenas, certainly affects the Estate's substantial rights.

Grounds for Appeal

Unlike notices of appeal in the federal courts, Rule 203, SCRAP does not provide for the appellant to identify the grounds for appeal in the notice of appeal. Those grounds must be set forth in the appellant's opening brief, which is filed thirty days after receipt of the transcript. Rule 208, SCRAP. Petitioner intends to include a prayer for supersedeas and mandamus in its opening brief.

Respondents have challenged the jurisdiction of this Court to hear and decide this case. S.C. Const. Art. V, § 5 grants the Supreme Court the "power to issue writs or orders of injunction, **mandamus**, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." (Emphasis added.) S.C. Const. Art. V, § 9 grants the South Carolina Court of Appeals "such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. Art. V, § 20, titled "Powers of Justices and judges at chambers" provides that:

Each of the Justices of the Supreme Court and judges of the Court of

Appeals and Circuit Court and of all other courts of record shall have the same power at chambers to issue writs of habeas corpus, **mandamus**, quo warranto, certiorari, prohibition, and **interlocutory writs** or orders of injunction as when in open court. (Emphasis added.) The judges of the Court of Appeals have such **additional powers** at chambers as provided by the General Assembly. Id. (Emphasis added.)

The General Assembly granted this Court jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court..., requiring this Court to “apply the same scope of review that the Supreme Court would apply in a similar case.” South Carolina Code of Laws §14-8-200. That statute grants this Court the same authority as the Supreme Court “to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case.” South Carolina Code of Laws § 14-8-290 grants each of the judges of the Court of Appeals “the same power at chambers to administer oaths, issue writs of habeas corpus, **mandamus**, quo warranto, **certiorari** and prohibition and **interlocutory writs** or orders of injunction as when in open court. (Emphasis added).

South Carolina Code of Laws § 14-3-310 also authorizes the Supreme Court to issue writs or orders of injunction and **mandamus**, in addition to authority to issue **writs of certiorari**, and other remedial and original writs.

South Carolina Code of Laws § 14-8-260 provides that if this Court determines that a notice of appeal involves a matter over which it lacks

jurisdiction, it must issue an order transferring the case to the Supreme Court.

SCRAP Rule 204 also provides that in the event that a notice of appeal is filed in the wrong appellate court, the appellate court in which the matter was filed shall transfer the case to the appropriate court.

The General Assembly has granted this Court the authority to hear and resolve issues contained this appeal, which will be fully set forth and supported by the not-yet-produced record in Petitioner's opening brief within thirty days of receipt of the transcript. However, Petitioner would not oppose this appeal being transferred to the Supreme Court, if this Court elects not to exercise jurisdiction. Rule 204(b) authorizes transfer of cases such as this one, which involve issues of significant public interest and legal principles of major importance, to the Supreme Court. SCRAP Rule 204(b).

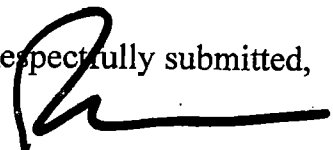
Conclusion

Since the subpoenas were served upon the non-party witnesses, three DDSN Commissioners have resigned, leaving the agency that serves thousands of families across the state without a quorum. Forcing former board members to comply with such burdensome and "beyond the pale" subpoenas will affect not only the Petitioner in this case, but will chill potential Commissioners from serving on the Commission, or opposing illegal practices.

The Supreme Court has recognized that abusive discovery tactics have become more common and there is a trend of trial courts refusing to enforce discovery rules. These practices are even more egregious when conducted by private counsel paid with taxpayer dollars representing an agency with an obligation to act in the best interests of its clients.¹

For the reasons set forth above, dismissal of this case would be premature before briefing. This Court should deny Respondents' motion and either hear this matter after the submission of briefs, or transfer the case to the Supreme Court.

Respectfully submitted,



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ATTORNEYS FOR THE PLAINTIFF

October 3, 2019

¹ The Medicaid Act requires states to provide care and services in the best interests of the recipients under 42 U.S.C.S. § 1396a(a)(19).

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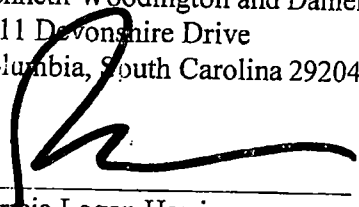
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CERTIFICATE OF SERVICE

The undersigned has served Petitioner's Response to Respondents' Motion to Dismiss upon Respondents' counsel by hand delivery on this 3d day of October, 2019 at the following address:

Kenneth Woodington and Daniel Plyler
1611 Devonshire Drive
Columbia, South Carolina 29204



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The Petitioner recognizes that a trial judge's rulings on discovery matters will not be disturbed by an appellate court "absent a clear abuse of discretion." *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (citing *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989)). However, a writ may be issued by

an appellate court to review a discovery order “where exceptional circumstances exist.” *Id. at 577, 683 S.E.2d at 498* (citing *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.2d 154 (2009)). Exceptional circumstances exist in the challenge of the Estate of Edward James Mims to the discovery orders issued by the Richland County Court of Common Pleas, which includes gross abuse of discovery rules. Important issues were also raised in the trial court below regarding the relationship between taxpayer-funded private practice counsel and the authority of the governing body to direct their own legal representation.

As stated above, the Petitioner is “keenly aware that the scope of discovery is broad” in South Carolina. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Envtl. Control*, *Supra*. However, there are limits to the exercise of that discretion. The Supreme Court has complained that trial courts have been “generally unwilling to recognize and enforce” those limits. *Id.* As in *Oncology*, the discovery demands in this case have been “abusive and beyond the pale,” particularly as they relate to the oppressive discovery demands directed at former members of the governing board of the South Carolina Department of Disabilities and Special Needs which are intended to harass them and to chill their testimony. *Id.*

Since these subpoenas were issued three more DDSN Commissioners

resigned from the governing board of the agency. Enforcement of the subpoenas would prevent citizens from providing voluntary service to that governing board and would chill those Commissioners who serve and DDSN providers like Lennie Mullis, from challenging actions taken by the director. Allowing the lower court to force former Commissioners to comply with Respondent's late-filed burdensome subpoenas would surely exacerbate the problem of finding qualified candidates to serve on the governing board, which at present does not even have a quorum and prevent qualified providers from serving DDSN clients.

The issues Petitioner raises are of tremendous public importance. It is clear that the subpoenas, which were served after the discovery deadline, demanding that two former DDSN Commissioners produce records more than a decade old and subjecting them to risk of contempt of court, were not authorized by the governing board of the agency, as no executive session was held to discuss legal matters during 2019. The motion to dismiss was filed when the agency was without a quorum to authorize the filing. Exhibit 13. This appeal will allow the appropriate appellate court to send a message to trial courts regarding the importance of scheduling orders and that they must "impose reasonable discovery limits" by not allowing discovery "that exceeds that permitted by the rules of procedure." *Id.*

An order affects a substantial right and is immediately appealable when it

"(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]" Section 14-3-330(2). *Hagood v. Sommerville*, 607 S.E.2d 707, 362 S.C. 191 (2005). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review **usually** is considered an interlocutory order from which no immediate appeal is allowed. *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002). (Emphasis added.) But, there are exceptions to this general rule and this case presents exceptional circumstances warranting an exception.

In *Hagood*, a plaintiff bicyclist appealed a trial court's interlocutory order which required him to either get a new expert or get new counsel in his case against the defendant driver. The trial court determined that because the expert was employed full-time by the bicyclist's attorney as a professional investigator and accident reconstruction expert, the expert could not testify. The issue was whether the order was immediately appealable. The trial court gave the bicyclist two options: (1) do not use the expert as a witness, but find another expert witness and proceed to trial with his attorney or (2) the attorney had to withdraw due to the disqualification, and the bicyclist could retain new counsel, and use the expert

witness at trial. When the bicyclist's attorney withdrew, the bicyclist argued the order was immediately appealable under S.C. Code Ann. § 14-3-330(2) (1976) because it affected a substantial right, namely, the right to proceed with a lawyer of his choosing. The appellate court held that not only was the order immediately appealable, but it had to be immediately appealed in order to preserve the error.

Here, if Petitioner did not appeal this order, his right to appeal the issues raised in this case would be lost. Normally, a non-party witness has only two alternatives. *Ex parte Whetstone*, 347 S.E.2d 881, 289 S.C. 580, fn 3 (S.C., 1986). She may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after being held in contempt for her failure to comply. *Id.* But *Whetstone* did not address the substantial right of the **plaintiff** when his witnesses are subjected to abusive discovery tactics. The rule in *Hagood* should be applied here, where the plaintiff will be forced to locate other witnesses willing to subject themselves to such discovery demands, if any such witnesses can be found after more than a decade of litigation.

Enforcement of the lower court's order would affect a substantial right of Petitioner, who risks the loss of some if not all of his expert witnesses and who has a substantial right to have litigation decisions made by the governing board of the

agency that provided him services, rather than former officials who may have a conflicting interest from the best interests of the agency. Petitioner filed this lawsuit in 2007 and filed an amended complaint in 2008, incurring already the costs of two appeals. Further delay and being required to find other experts if the witnesses are forced to comply with the subpoenas, certainly affects the Estate's substantial rights.

Grounds for Appeal

Unlike notices of appeal in the federal courts, Rule 203, SCRAP does not provide for the appellant to identify the grounds for appeal in the notice of appeal. Those grounds must be set forth in the appellant's opening brief, which is filed thirty days after receipt of the transcript. Rule 208, SCRAP. Petitioner intends to include a prayer for supersedeas and mandamus in its opening brief.

Respondents have challenged the jurisdiction of this Court to hear and decide this case. S.C. Const. Art. V, § 5 grants the Supreme Court the "power to issue writs or orders of injunction, **mandamus**, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." (Emphasis added.) S.C. Const. Art. V, § 9 grants the South Carolina Court of Appeals "such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. Art. V, § 20, titled "Powers of Justices and judges at chambers" provides that:

Each of the Justices of the Supreme Court and judges of the Court of

Appeals and Circuit Court and of all other courts of record shall have the same power at chambers to issue writs of habeas corpus, **mandamus**, quo warranto, certiorari, prohibition, and **interlocutory writs** or orders of injunction as when in open court. (Emphasis added.) The judges of the Court of Appeals have such **additional powers** at chambers as provided by the General Assembly. Id. (Emphasis added.)

The General Assembly granted this Court jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court..., requiring this Court to “apply the same scope of review that the Supreme Court would apply in a similar case.” South Carolina Code of Laws §14-8-200. That statute grants this Court the same authority as the Supreme Court “to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case.” South Carolina Code of Laws § 14-8-290 grants each of the judges of the Court of Appeals “the same power at chambers to administer oaths, issue writs of habeas corpus, **mandamus**, quo warranto, **certiorari** and prohibition and **interlocutory writs** or orders of injunction as when in open court. (Emphasis added).

South Carolina Code of Laws § 14-3-310 also authorizes the Supreme Court to issue writs or orders of injunction and **mandamus**, in addition to authority to issue **writs of certiorari**, and other remedial and original writs.

South Carolina Code of Laws § 14-8-260 provides that if this Court determines that a notice of appeal involves a matter over which it lacks

jurisdiction, it must issue an order transferring the case to the Supreme Court.

SCRAP Rule 204 also provides that in the event that a notice of appeal is filed in the wrong appellate court, the appellate court in which the matter was filed shall transfer the case to the appropriate court.

The General Assembly has granted this Court the authority to hear and resolve issues contained this appeal, which will be fully set forth and supported by the not-yet-produced record in Petitioner's opening brief within thirty days of receipt of the transcript. However, Petitioner would not oppose this appeal being transferred to the Supreme Court, if this Court elects not to exercise jurisdiction. Rule 204(b) authorizes transfer of cases such as this one, which involve issues of significant public interest and legal principles of major importance, to the Supreme Court. SCRAP Rule 204(b).

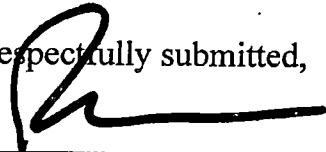
Conclusion

Since the subpoenas were served upon the non-party witnesses, three DDSN Commissioners have resigned, leaving the agency that serves thousands of families across the state without a quorum. Forcing former board members to comply with such burdensome and "beyond the pale" subpoenas will affect not only the Petitioner in this case, but will chill potential Commissioners from serving on the Commission, or opposing illegal practices.

The Supreme Court has recognized that abusive discovery tactics have become more common and there is a trend of trial courts refusing to enforce discovery rules. These practices are even more egregious when conducted by private counsel paid with taxpayer dollars representing an agency with an obligation to act in the best interests of its clients.¹

For the reasons set forth above, dismissal of this case would be premature before briefing. This Court should deny Respondents' motion and either hear this matter after the submission of briefs, or transfer the case to the Supreme Court.

Respectfully submitted,



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ATTORNEYS FOR THE PLAINTIFF

October 3, 2019

¹ The Medicaid Act requires states to provide care and services in the best interests of the recipients under 42 U.S.C.S. § 1396a(a)(19).

List of Exhibits

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EXHIBITS

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Estate of Edward James Mims,	)	
Laura M. Cole, Personal Representative,	)	C. A. No.: 2007-CP-40-3365
Plaintiff,	)	
v.	)	SECOND AMENDED CONSENT
	)	SCHEDULING ORDER
The South Carolina Department of	)	
Disabilities and Special Needs, Kathi Lacy,	)	
And Stanley Butkus,	)	
<u>Defendants.</u>	)	

This matter was initially filed on May 29, 2007. The Plaintiff amended his Complaint on May 7, 2008. The Defendants filed two motions to dismiss the amended complaint on or about June 9, 2008. By order filed June 4, 2009, the trial court formally denied Defendant's motions to dismiss Mims' amended complaint. Upon Defendants' motions to alter or amend, the trial court held another hearing on September 4, 2009 and thereafter granted Defendant's motions to dismiss, without prejudice, by order filed November 23, 2009, based on insufficiency of process and insufficient service of process. The Plaintiff timely appealed and on August 15, 2012 the South Carolina Supreme Court reversed the Circuit Court's decision and remanded the case for further proceedings. See, *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 732 S.E.2d 395 (S.C., 2012).

On January 21, 2014 the Circuit Court granted summary judgment for Defendants, and Plaintiff appealed to the South Carolina Court of Appeals. On November 8, 2017 the South Carolina Court of Appeals affirmed the dismissal of Plaintiff's ADA and Rehabilitation Act claims, reversed the dismissal of the Plaintiff's 42 USCA Section 1983 claims as well as his negligence, gross negligence, and negligent supervision claims and ruled that Mims benefitted from a five year tolling statute. The Court of Appeals remanded the case for further proceedings consistent with their decision. See, *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 811 S.E.2d 807, 422 S.C. 388 (S.C. App., 2017).

The Defendants petitioned the South Carolina Supreme Court for a writ of Certiorari on May 9, 2018. On August 3, 2018 the South Carolina Supreme Court denied the petition and this case was remanded to this court. On August 9, 2018 the Court of Appeals issued its remittitur. On September 18, 2018 additional counsel for the Plaintiff was substituted. On September 28, 2018 the Defendants moved for a continuance and a status conference. On October 1, 2018 the Chief Administrative Judge ordered a continuance, a status conference and directed the parties to submit proposed scheduling orders. The parties engaged in a scheduling order on October 8, 2018 which provided for completion of discovery within 90 days of the Order and mediation within 45 days after the completion of discovery with a status conference with the Court before trial is scheduled if mediation was unsuccessful. On December 6, 2018 an additional Scheduling Order was executed providing for discovery to be completed by March 1, 2019 and mediation within 45 days thereafter.

Defendants have noticed over a dozen depositions since December and the Plaintiff has supplemented discovery responses at the request of the Defendants. Both parties need to take a number of additional depositions before Mediation is scheduled. The parties have in good faith attempted to comply with this Court's scheduling Orders but have been unable to complete them in a timely fashion. In order to provide for an orderly process for prompt disposition of this case, the Court determines that they shall proceed on the following schedule:

1. Discovery shall be completed on or before May 31, 2019. The parties by consent can extend this deadline up to thirty (30) days.
2. Mediation shall occur on or before July 19, 2019. The parties by consent can extend this deadline up to thirty (30) days.
3. If the case is not resolved through mediation, trial of this case shall be no earlier than September 1, 2019

4. If the case is not resolved through mediation, the parties are instructed to contact the Chief Administrative Judge for the purpose of scheduling a date certain trial date.

IT IS SO ORDERED!

The Honorable Jocelyn Newman
Chief Administrative Judge

Columbia, South Carolina
March ____, 2019

We Consent:

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ATTORNEYS FOR DEFENDANTS



Richland Common Pleas

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center Inc , defendant,
et al
Case Number: 2007CP4003365
Type: Order/Scheduling Order

So Ordered

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

Electronically signed on 2019-03-22 10:24:21 page 4 of 4

Exhibit 2. Subpoenas

DAVIDSON, WREN & PLYLER, P.A.

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David A. DeMasters
Brandon M. Briggs

Of Counsel
Kenneth P. Woodington

June 3, 2019

Writer's Email: dplyler@dml-law.com

Jacquelyn Abney, R.N.
525 Lockner Road
Columbia, South Carolina 29212

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus
Civil Action Number: 2007-CP-40-3365
Date of Incident: January 4, 1999
Claim Number: 44654
Our File Number: 104.7785

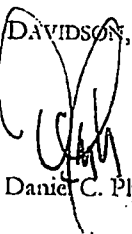
Dear Ms. Abney:

Please find enclosed herewith and served upon you a subpoena with regard to the above referenced matter. Please note that this is a subpoena for your records only, and that you are not required to appear personally. As stated in the subpoena, the documents should be sent to my attention by Monday, June 17, 2019.

If you have any questions, or if you have any problems complying with this subpoena, please contact me. Thank you very much for your assistance.

Very truly yours,

DAVIDSON, WREN & PLYLER, P.A.


Daniel C. Plyler

DCP/mss
Enclosure

cc: Patricia L. Harrison, Esquire
Robert C. Childs, III, Esquire

ELECTRONICALLY FILED - 2019 Jun 17 1:58 PM - RICHLAND - COMMON PLEAS - CASE#2007CP4003365

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Estate of Edward James Mims, Laura M. Cole,
Personal Representative, Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

The South Carolina Department of Disabilities and
Special Needs, Kathi Lacy, and Stanley Butkus,
Defendants.

Case Number: 2007-CP-40-03365

Pending in Richland County

TO: Jacquelyn Abney, R.N.

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME
----------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

See attachment.

PLACE Davidson, Wren & Plyler, P.A. ATTN: Daniel C. Plyler, Esquire Post Office Box 8568 Columbia, South Carolina 29202-8568	DATE AND TIME Monday, June 17, 2019 by 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number:
Counsel for Defendants06/03/19
Date

Daniel C. Plyler, Esquire

Print Name

Davidson, Wren, & Plyler, P.A. P.O. Box 8568, Columbia, South Carolina 29202 T: 803-806-8222

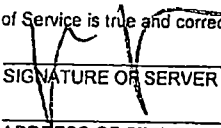
PROOF OF SERVICE

SERVED	DATE June 3, 2019	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE 525 Lockner Road, Columbia, SC 29212	
SERVED ON Jacquelyn Abney, R.N.	MANNER OF SERVICE U.S. Mail, First Class Postage Pre-Paid	
SERVED BY Melissa S. Segear	TITLE Paralegal	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/3/19

SIGNATURE OF SERVER 

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection and copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Subpoena Attachment

1. Your most recent Curriculum Vitae and publications list.
2. All correspondence, memoranda, articles, notes, reports, e-mails or other computer messages including attachments, computer simulations, computer generated data, studies, tests, test results, charts, graphs, or other documents or written material that you have received from or sent to any person, including attorneys, relating to this case and to any opinions rendered to the Plaintiff, Plaintiff's counsel or other representatives in this case.
3. Notes, memoranda or other written documentation of telephone conversations, which you have had with Plaintiff, Plaintiff's counsel, other witnesses, other experts, or any other individuals with whom you have consulted relating to or regarding your opinions concerning this case.
4. Notes made by you in reviewing or analyzing materials and preparing your evaluation or opinions for this case. This would include any written research or memoranda of written or oral reports reviewed.
5. All drafts of reports and final reports, which contain your opinions in this matter, including computer drafts that are not hard copies.
6. A complete list of all written materials, notes, memoranda, tests, test results, examinations or other materials reviewed by you in preparation of your opinion.
7. A complete list of any and all documents including all articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support your findings, conclusions, opinions, or testimony or that you rely on as a basis for your findings, conclusions, opinions or testimony. For every text or periodical cited, please denote the chapter and page where the information is located that supports your opinion.
8. Your entire file with respect to the subject matter of this litigation compiled in connection with work done by you, your organization or at the request of Plaintiff or Plaintiff's counsel, including items not specifically listed above.
9. A complete list of all literature that you have reviewed which provided you with information upon which you rely for your opinion in this case.
10. Any and all documents which refer to, relate to, or evidence your billings or the time, you or others have spent on this case.
11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.
12. Any and all documentation relating to analysis done for this case or material relied on in this case which have not been requested.

13. If any of the documents or items requested above have been destroyed, please produce a schedule identifying:
 - a. each such document or item destroyed;
 - b. the date of destruction;
 - c. the reason for destruction; and
 - d. the person(s) or entity(ies) that might have the item or a copy of the document(s) destroyed.
14. If any of the documents or items requested above are no longer in your possession and have been transmitted, conveyed or tendered to another person or entity, please produce a schedule identifying:
 - a. each such document or item;
 - b. the date of each such conveyance, transmittal or tender;
 - c. the name(s) of each such person(s) or entity(ies) to which the document or item was transmitted, conveyed or tendered; and
 - d. the reason for each such conveyance, transmittal or tender.
15. All photographs, films, videotapes, and any other visual representations generated for the purposes of this case.
16. A complete list of all physical evidence used, analyzed or otherwise acquired for this case.
17. Time sheets or other records which will show the amount of time devoted to all aspects of your work on this matter and which identifies the nature of the work done and the dates on which such work was performed.
18. All statements which have been sent to Plaintiff or Plaintiff's counsel for services rendered and for costs incurred in connection with your work on this matter.
19. The current balance of fees and expenses incurred (whether billed or unbilled) to date in connection with your work on this matter.
20. A list of all cases in which you have been retained, given depositions, or provided trial testimony during the last five (5) years, including the name of the person or firm who retained you, whether Plaintiff or Defendant, the attorneys you worked with, the subject matter of the lawsuit, summary of your opinion, your area of testimony, the outcome of the case and your fee for the case. Included in this response should be your role in the litigation, i.e., consultation, testimony by deposition or testimony at trial, etc.
21. A complete list of each article, pamphlet, book, book chapter, or other document upon which you have read and determined does not support any of the expert opinions you have in this case.

22. All exhibits which you plan to discuss or use at trial.
23. Provide the fee agreement for this case and any other cases where you were named as an expert by Attorney Patricia Harrison

DAVIDSON, WREN & PLYLER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Michael B. Wren
Daniel C. Plyler

1611 Devonshire Drive, Second Floor (29204)
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855

David A. DeMasters
Brandon M. Briggs

Of Counsel
Kenneth P. Woodington

June 3, 2019

Writer's Email: dplyler@dml-law.com

Sandra Ray, Ph.D.
120 Killian Point Circle
Chapin, South Carolina 29036

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South
Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus
Civil Action Number: 2007-CP-40-3365
Date of Incident: January 4, 1999
Claim Number: 44654
Our File Number: 104.7785

Dear Dr. Ray:

Please find enclosed herewith and served upon you a subpoena with regard to the above referenced matter. Please note that this is a subpoena for your records only, and that you are not required to appear personally. As stated in the subpoena, the documents should be sent to my attention by Monday, June 17, 2019.

If you have any questions, or if you have any problems complying with this subpoena, please contact me. Thank you very much for your assistance.

Very truly yours,

DAVIDSON WREN & PLYLER, P.A.


Daniel C. Plyler

DCP/mss
Enclosure

cc: Patricia L. Harrison, Esquire
Robert C. Childs, III, Esquire

ELECTRONICALLY FILED - 2019 Jun 17 1:57 PM - RICHLAND - COMMON PLEAS - CASE#2007CP4003365

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Estate of Edward James Mims, Laura M. Cole,
Personal Representative, Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

The South Carolina Department of Disabilities and
Special Needs, Kathi Lacy, and Stanley Butkus,
Defendants.

Case Number: 2007-CP-40-03365

Pending in Richland County

TO: Sandra Ray, Ph.D.

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME
----------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See attachment.

PLACE Davidson, Wren & Plyler, P.A. ATTN: Daniel C. Plyler, Esquire Post Office Box 8568 Columbia, South Carolina 29202-8568	DATE AND TIME Monday, June 17, 2019 by 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
Counsel for Defendants

06/03/19

Date

Daniel C. Plyler, Esquire

Print Name

Davidson, Wren, & Plyler, P.A. P.O. Box 8568, Columbia, South Carolina 29202 T: 803-806-8222

PROOF OF SERVICE

SERVED	DATE June 3, 2019	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE 120 Killian Point Circle, Chapin, SC 29036	
SERVED ON Sandra Ray, Ph.D.	MANNER OF SERVICE U.S. Mail, First Class Postage Pre-Paid	
SERVED BY Melissa S. Segear	TITLE Paralegal	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/3/19

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Subpoena Attachment

1. Your most recent Curriculum Vitae and publications list.
2. All correspondence, memoranda, articles, notes, reports, e-mails or other computer messages including attachments, computer simulations, computer generated data, studies, tests, test results, charts, graphs, or other documents or written material that you have received from or sent to any person, including attorneys, relating to this case and to any opinions rendered to the Plaintiff, Plaintiff's counsel or other representatives in this case.
3. Notes, memoranda or other written documentation of telephone conversations, which you have had with Plaintiff, Plaintiff's counsel, other witnesses, other experts, or any other individuals with whom you have consulted relating to or regarding your opinions concerning this case.
4. Notes made by you in reviewing or analyzing materials and preparing your evaluation or opinions for this case. This would include any written research or memoranda of written or oral reports reviewed.
5. All drafts of reports and final reports, which contain your opinions in this matter, including computer drafts that are not hard copies.
6. A complete list of all written materials, notes, memoranda, tests, test results, examinations or other materials reviewed by you in preparation of your opinion.
7. A complete list of any and all documents including all articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support your findings, conclusions, opinions, or testimony or that you rely on as a basis for your findings, conclusions, opinions or testimony. For every text or periodical cited, please denote the chapter and page where the information is located that supports your opinion.
8. Your entire file with respect to the subject matter of this litigation compiled in connection with work done by you, your organization or at the request of Plaintiff or Plaintiff's counsel, including items not specifically listed above.
9. A complete list of all literature that you have reviewed which provided you with information upon which you rely for your opinion in this case.
10. Any and all documents which refer to, relate to, or evidence your billings or the time, you or others have spent on this case.
11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.
12. Any and all documentation relating to analysis done for this case or material relied on in this case which have not been requested.

13. If any of the documents or items requested above have been destroyed, please produce a schedule identifying:
 - a. each such document or item destroyed;
 - b. the date of destruction;
 - c. the reason for destruction; and
 - d. the person(s) or entity(ies) that might have the item or a copy of the document(s) destroyed.
14. If any of the documents or items requested above are no longer in your possession and have been transmitted, conveyed or tendered to another person or entity, please produce a schedule identifying:
 - a. each such document or item;
 - b. the date of each such conveyance, transmittal or tender;
 - c. the name(s) of each such person(s) or entity(ies) to which the document or item was transmitted, conveyed or tendered; and
 - d. the reason for each such conveyance, transmittal or tender.
15. All photographs, films, videotapes, and any other visual representations generated for the purposes of this case.
16. A complete list of all physical evidence used, analyzed or otherwise acquired for this case.
17. Time sheets or other records which will show the amount of time devoted to all aspects of your work on this matter and which identifies the nature of the work done and the dates on which such work was performed.
18. All statements which have been sent to Plaintiff or Plaintiff's counsel for services rendered and for costs incurred in connection with your work on this matter.
19. The current balance of fees and expenses incurred (whether billed or unbilled) to date in connection with your work on this matter.
20. A list of all cases in which you have been retained, given depositions, or provided trial testimony during the last five (5) years, including the name of the person or firm who retained you, whether Plaintiff or Defendant, the attorneys you worked with, the subject matter of the lawsuit, summary of your opinion, your area of testimony, the outcome of the case and your fee for the case. Included in this response should be your role in the litigation, i.e., consultation, testimony by deposition or testimony at trial, etc.
21. A complete list of each article, pamphlet, book, book chapter, or other document upon which you have read and determined does not support any of the expert opinions you have in this case.

22. All exhibits which you plan to discuss or use at trial.
23. Provide the fee agreement for this case and any other cases where you were named as an expert by Attorney Patricia Harrison

DAVIDSON, WREN & PLYLER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Michael B. Wren
Daniel C. Plyler

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Post Office Box 8568
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Telephone: (803) 806-8222
Facsimile: (803) 806-8855

David A. DeMasters
Brandon M. Briggs

Of Counsel
Kenneth P. Woodington

June 3, 2019

Writer's Email: dplyler@dml-law.com

Deborah McPherson
304 Valley Springs Road
Columbia, South Carolina 29223

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus
Civil Action Number: 2007-CP-40-3365
Date of Incident: January 4, 1999
Claim Number: 44654
Our File Number: 104.7785

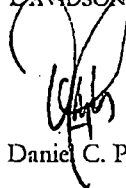
Dear Ms. McPherson:

Please find enclosed herewith and served upon you a subpoena with regard to the above referenced matter. Please note that this is a subpoena for your records only, and that you are not required to appear personally. As stated in the subpoena, the documents should be sent to my attention by Monday, June 17, 2019.

If you have any questions, or if you have any problems complying with this subpoena, please contact me. Thank you very much for your assistance.

Very truly yours,

DAVIDSON, WREN & PLYLER, P.A.



Daniel C. Plyler

DCP/mss

Enclosure

cc: Patricia L. Harrison, Esquire
Robert C. Childs, III, Esquire

ELECTRONICALLY FILED - 2019 Jun 17 1:57 PM - RICHLAND - COMMON PLEAS - CASE#2007CP4003365

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Estate of Edward James Mims, Laura M. Cole,
Personal Representative, Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

The South Carolina Department of Disabilities and
Special Needs, Kathi Lacy, and Stanley Butkus,
Defendants.

Case Number: 2007-CP-40-03365

Pending in Richland County

TO: Deborah McPherson

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME
----------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See attachment.

PLACE Davidson, Wren & Plyler, P.A. ATTN: Daniel C. Plyler, Esquire Post Office Box 8568 Columbia, South Carolina 29202-8568	DATE AND TIME Monday, June 17, 2019 by 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature Indicate if Attorney for Plaintiff or Defendant Attorney's Address and Telephone Number: Counsel for Defendants	06/03/19 Date	Daniel C. Plyler, Esquire Print Name
Davidson, Wren, & Plyler, P.A. P.O. Box 8568, Columbia, South Carolina 29202 T: 803-806-8222		

PROOF OF SERVICE

SERVED	DATE June 3, 2019	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE 304 Valley Springs Road, Columbia, SC 29223	
SERVED ON Deborah McPherson	MANNER OF SERVICE U.S. Mail, First Class Postage Pre-Paid	
SERVED BY Melissa S. Segear	TITLE Paralegal	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/3/19

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection and copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Subpoena Attachment

1. Your most recent Curriculum Vitae and publications list.
2. All correspondence, memoranda, articles, notes, reports, e-mails or other computer messages including attachments, computer simulations, computer generated data, studies, tests, test results, charts, graphs, or other documents or written material that you have received from or sent to any person, including attorneys, relating to this case and to any opinions rendered to the Plaintiff, Plaintiff's counsel or other representatives in this case.
3. Notes, memoranda or other written documentation of telephone conversations, which you have had with Plaintiff, Plaintiff's counsel, other witnesses, other experts, or any other individuals with whom you have consulted relating to or regarding your opinions concerning this case.
4. Notes made by you in reviewing or analyzing materials and preparing your evaluation or opinions for this case. This would include any written research or memoranda of written or oral reports reviewed.
5. All drafts of reports and final reports, which contain your opinions in this matter, including computer drafts that are not hard copies.
6. A complete list of all written materials, notes, memoranda, tests, test results, examinations or other materials reviewed by you in preparation of your opinion.
7. A complete list of any and all documents including all articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support your findings, conclusions, opinions, or testimony or that you rely on as a basis for your findings, conclusions, opinions or testimony. For every text or periodical cited, please denote the chapter and page where the information is located that supports your opinion.
8. Your entire file with respect to the subject matter of this litigation compiled in connection with work done by you, your organization or at the request of Plaintiff or Plaintiff's counsel, including items not specifically listed above.
9. A complete list of all literature that you have reviewed which provided you with information upon which you rely for your opinion in this case.
10. Any and all documents which refer to, relate to, or evidence your billings or the time, you or others have spent on this case.
11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.
12. Any and all documentation relating to analysis done for this case or material relied on in this case which have not been requested.

13. If any of the documents or items requested above have been destroyed, please produce a schedule identifying:
 - a. each such document or item destroyed;
 - b. the date of destruction;
 - c. the reason for destruction; and
 - d. the person(s) or entity(ies) that might have the item or a copy of the document(s) destroyed.
14. If any of the documents or items requested above are no longer in your possession and have been transmitted, conveyed or tendered to another person or entity, please produce a schedule identifying:
 - a. each such document or item;
 - b. the date of each such conveyance, transmittal or tender;
 - c. the name(s) of each such person(s) or entity(ies) to which the document or item was transmitted, conveyed or tendered; and
 - d. the reason for each such conveyance, transmittal or tender.
15. All photographs, films, videotapes, and any other visual representations generated for the purposes of this case.
16. A complete list of all physical evidence used, analyzed or otherwise acquired for this case.
17. Time sheets or other records which will show the amount of time devoted to all aspects of your work on this matter and which identifies the nature of the work done and the dates on which such work was performed.
18. All statements which have been sent to Plaintiff or Plaintiff's counsel for services rendered and for costs incurred in connection with your work on this matter.
19. The current balance of fees and expenses incurred (whether billed or unbilled) to date in connection with your work on this matter.
20. A list of all cases in which you have been retained, given depositions, or provided trial testimony during the last five (5) years, including the name of the person or firm who retained you, whether Plaintiff or Defendant, the attorneys you worked with, the subject matter of the lawsuit, summary of your opinion, your area of testimony, the outcome of the case and your fee for the case. Included in this response should be your role in the litigation, i.e., consultation, testimony by deposition or testimony at trial, etc.
21. A complete list of each article, pamphlet, book, book chapter, or other document upon which you have read and determined does not support any of the expert opinions you have in this case.

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DAVIDSON, WREN & PLYLER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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Michael B. Wren
Daniel C. Plyler

1611 Devonshire Drive, Second Floor (29204)
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855

David A. DeMasters
Brandon M. Briggs

Of Counsel
Kenneth P. Woodington

June 3, 2019

Writer's Email: dplyler@dml-law.com

Mary Katherine Bagnal
Senior Matters
3710 Landmark Drive, Suite 109
Columbia, South Carolina 29204

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus
Civil Action Number: 2007-CP-40-3365
Date of Incident: January 4, 1999
Claim Number: 44654
Our File Number: 104.7785

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If you have any questions, or if you have any problems complying with this subpoena, please contact me. Thank you very much for your assistance.

Very truly yours,

DAVIDSON, WREN & PLYLER, P.A.



Daniel C. Plyler

DCP/mss
Enclosure

cc: Patricia L. Harrison, Esquire
Robert C. Childs, III, Esquire

ELECTRONICALLY FILED - 2019 Jun 17 1:57 PM - RICHLAND - COMMON PLEAS - CASE#2007CP4003365

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Estate of Edward James Mims, Laura M. Cole,
Personal Representative, Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

The South Carolina Department of Disabilities and
Special Needs, Kathi Lacy, and Stanley Butkus,
Defendants.

Case Number: 2007-CP-40-03365

Pending in Richland County

TO: Mary Katherine Bagnal

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:	DATE AND TIME
----------------------	---------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

See attachment.

PLACE Davidson, Wren & Plyler, P.A. ATTN: Daniel C. Plyler, Esquire Post Office Box 8568 Columbia, South Carolina 29202-8568	DATE AND TIME Monday, June 17, 2019 by 5:00 PM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
Counsel for Defendants

06/03/19

Date

Daniel C. Plyler, Esquire

Print Name

Davidson, Wren, & Plyler, P.A. P.O. Box 8568, Columbia, South Carolina 29202 T: 803-806-8222

PROOF OF SERVICE

SERVED	DATE June 3, 2019	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE Senior Matters, 3710 Landmark Drive, Suite 109, Columbia, SC 29204	
SERVED ON Mary Katherine Bagnol	MANNER OF SERVICE U.S. Mail, First Class Postage Pre-Paid	
SERVED BY Melissa S. Segear	TITLE Paralegal	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/3/19

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection and copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
- (i) fails to allow reasonable time for compliance; or
 - (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) If a subpoena:
- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
 - (iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties In Responding to Subpoena.

- (1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.
- (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Subpoena Attachment

1. Your most recent Curriculum Vitae and publications list.
2. All correspondence, memoranda, articles, notes, reports, e-mails or other computer messages including attachments, computer simulations, computer generated data, studies, tests, test results, charts, graphs, or other documents or written material that you have received from or sent to any person, including attorneys, relating to this case and to any opinions rendered to the Plaintiff, Plaintiff's counsel or other representatives in this case.
3. Notes, memoranda or other written documentation of telephone conversations, which you have had with Plaintiff, Plaintiff's counsel, other witnesses, other experts, or any other individuals with whom you have consulted relating to or regarding your opinions concerning this case.
4. Notes made by you in reviewing or analyzing materials and preparing your evaluation or opinions for this case. This would include any written research or memoranda of written or oral reports reviewed.
5. All drafts of reports and final reports, which contain your opinions in this matter, including computer drafts that are not hard copies.
6. A complete list of all written materials, notes, memoranda, tests, test results, examinations or other materials reviewed by you in preparation of your opinion.
7. A complete list of any and all documents including all articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support your findings, conclusions, opinions, or testimony or that you rely on as a basis for your findings, conclusions, opinions or testimony. For every text or periodical cited, please denote the chapter and page where the information is located that supports your opinion.
8. Your entire file with respect to the subject matter of this litigation compiled in connection with work done by you, your organization or at the request of Plaintiff or Plaintiff's counsel, including items not specifically listed above.
9. A complete list of all literature that you have reviewed which provided you with information upon which you rely for your opinion in this case.
10. Any and all documents which refer to, relate to, or evidence your billings or the time, you or others have spent on this case.
11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.
12. Any and all documentation relating to analysis done for this case or material relied on in this case which have not been requested.

13. If any of the documents or items requested above have been destroyed, please produce a schedule identifying:
 - a. each such document or item destroyed;
 - b. the date of destruction;
 - c. the reason for destruction; and
 - d. the person(s) or entity(ies) that might have the item or a copy of the document(s) destroyed.
14. If any of the documents or items requested above are no longer in your possession and have been transmitted, conveyed or tendered to another person or entity, please produce a schedule identifying:
 - a. each such document or item;
 - b. the date of each such conveyance, transmittal or tender;
 - c. the name(s) of each such person(s) or entity(ies) to which the document or item was transmitted, conveyed or tendered; and
 - d. the reason for each such conveyance, transmittal or tender.
15. All photographs, films, videotapes, and any other visual representations generated for the purposes of this case.
16. A complete list of all physical evidence used, analyzed or otherwise acquired for this case.
17. Time sheets or other records which will show the amount of time devoted to all aspects of your work on this matter and which identifies the nature of the work done and the dates on which such work was performed.
18. All statements which have been sent to Plaintiff or Plaintiff's counsel for services rendered and for costs incurred in connection with your work on this matter.
19. The current balance of fees and expenses incurred (whether billed or unbilled) to date in connection with your work on this matter.
20. A list of all cases in which you have been retained, given depositions, or provided trial testimony during the last five (5) years, including the name of the person or firm who retained you, whether Plaintiff or Defendant, the attorneys you worked with, the subject matter of the lawsuit, summary of your opinion, your area of testimony, the outcome of the case and your fee for the case. Included in this response should be your role in the litigation, i.e., consultation, testimony by deposition or testimony at trial, etc.
21. A complete list of each article, pamphlet, book, book chapter, or other document upon which you have read and determined does not support any of the expert opinions you have in this case.

22. All exhibits which you plan to discuss or use at trial.
23. Provide the fee agreement for this case and any other cases where you were named as an expert by Attorney Patricia Harrison

DAVIDSON, WREN & PLYLER, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Michael B. Wren
Daniel C. Plyler

1611 Devonshire Drive, Second Floor (29204)
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855

David A. DeMasters
Brandon M. Briggs

Of Counsel
Kenneth P. Woodington

June 3, 2019

Writer's Email: dplyler@dml-law.com

Lennie Mullis
1002 Lofty Pines
Columbia, South Carolina 29212

RE: Estate of Edward James Mims, Laura M. Cole, Personal Representative v. The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and Stan Butkus
Civil Action Number: 2007-CP-40-3365
Date of Incident: January 4, 1999
Claim Number: 44654
Our File Number: 104.7785

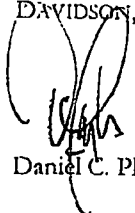
Dear Ms. Mullis:

Please find enclosed herewith and served upon you a subpoena with regard to the above referenced matter. Please note that this is a subpoena for your records only, and that you are not required to appear personally. As stated in the subpoena, the documents should be sent to my attention by Monday, June 17, 2019.

If you have any questions, or if you have any problems complying with this subpoena, please contact me. Thank you very much for your assistance.

Very truly yours,

DAVIDSON, WREN & PLYLER, P.A.


Daniel C. Plyler

DCP/mss
Enclosure

cc: Patricia L. Harrison, Esquire
Robert C. Childs, III, Esquire

ELECTRONICALLY FILED - 2019 Jun 17 1:57 PM - RICHLAND - COMMON PLEAS - CASE#2007CP4003365

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STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Estate of Edward James Mims, Laura M. Cole,
Personal Representative, Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

The South Carolina Department of Disabilities and
Special Needs, Kathi Lacy, and Stanley Butkus,
Defendants.

Case Number: 2007-CP-40-03365

Pending in Richland County

TO: Lennis Mullis

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See attachment.

PLACE

Davidson, Wren & Plyler, P.A.
ATTN: Daniel C. Plyler, Esquire
Post Office Box 8568

Columbia, South Carolina 29202-8568

DATE AND TIME

Monday, June 17, 2019 by 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

Counsel for Defendants

06/03/19

Date

Daniel C. Plyler, Esquire

Print Name

Davidson, Wren, & Plyler, P.A. P.O. Box 8568, Columbia, South Carolina 29202 T: 803-806-8222

PROOF OF SERVICE

SERVED	DATE June 3, 2019	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☒ NO AMOUNT \$
	PLACE 1002 Loftly Pines, Columbia, South Carolina 29212	
SERVED ON Lennie Mullis	MANNER OF SERVICE U.S. Mail, First Class Postage Pre-Paid	
SERVED BY Melissa S. Segear	TITLE Paralegal	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/3/19

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

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- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection and copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
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- (i) fails to allow reasonable time for compliance; or
 - (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
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- (B) If a subpoena:
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 - (ii) requires disclosure of an unclaimed expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
 - (iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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- (B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

Subpoena Attachment

1. Your most recent Curriculum Vitae and publications list.
2. All correspondence, memoranda, articles, notes, reports, e-mails or other computer messages including attachments, computer simulations, computer generated data, studies, tests, test results, charts, graphs, or other documents or written material that you have received from or sent to any person, including attorneys, relating to this case and to any opinions rendered to the Plaintiff, Plaintiff's counsel or other representatives in this case.
3. Notes, memoranda or other written documentation of telephone conversations, which you have had with Plaintiff, Plaintiff's counsel, other witnesses, other experts, or any other individuals with whom you have consulted relating to or regarding your opinions concerning this case.
4. Notes made by you in reviewing or analyzing materials and preparing your evaluation or opinions for this case. This would include any written research or memoranda of written or oral reports reviewed.
5. All drafts of reports and final reports, which contain your opinions in this matter, including computer drafts that are not hard copies.
6. A complete list of all written materials, notes, memoranda, tests, test results, examinations or other materials reviewed by you in preparation of your opinion.
7. A complete list of any and all documents including all articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support your findings, conclusions, opinions, or testimony or that you rely on as a basis for your findings, conclusions, opinions or testimony. For every text or periodical cited, please denote the chapter and page where the information is located that supports your opinion.
8. Your entire file with respect to the subject matter of this litigation compiled in connection with work done by you, your organization or at the request of Plaintiff or Plaintiff's counsel, including items not specifically listed above.
9. A complete list of all literature that you have reviewed which provided you with information upon which you rely for your opinion in this case.
10. Any and all documents which refer to, relate to, or evidence your billings or the time, you or others have spent on this case.
11. A complete list of any and all documents including, but not limited to, letters, notes, reviewers comments, that in any way assess, review, evaluate, critique or criticize any of your published or unpublished studies, research, reports or other works.
12. Any and all documentation relating to analysis done for this case or material relied on in this case which have not been requested.

13. If any of the documents or items requested above have been destroyed, please produce a schedule identifying:
 - a. each such document or item destroyed;
 - b. the date of destruction;
 - c. the reason for destruction; and
 - d. the person(s) or entity(ies) that might have the item or a copy of the document(s) destroyed.
14. If any of the documents or items requested above are no longer in your possession and have been transmitted, conveyed or tendered to another person or entity, please produce a schedule identifying:
 - a. each such document or item;
 - b. the date of each such conveyance, transmittal or tender;
 - c. the name(s) of each such person(s) or entity(ies) to which the document or item was transmitted, conveyed or tendered; and
 - d. the reason for each such conveyance, transmittal or tender.
15. All photographs, films, videotapes, and any other visual representations generated for the purposes of this case.
16. A complete list of all physical evidence used, analyzed or otherwise acquired for this case.
17. Time sheets or other records which will show the amount of time devoted to all aspects of your work on this matter and which identifies the nature of the work done and the dates on which such work was performed.
18. All statements which have been sent to Plaintiff or Plaintiff's counsel for services rendered and for costs incurred in connection with your work on this matter.
19. The current balance of fees and expenses incurred (whether billed or unbilled) to date in connection with your work on this matter.
20. A list of all cases in which you have been retained, given depositions, or provided trial testimony during the last five (5) years, including the name of the person or firm who retained you, whether Plaintiff or Defendant, the attorneys you worked with, the subject matter of the lawsuit, summary of your opinion, your area of testimony, the outcome of the case and your fee for the case. Included in this response should be your role in the litigation, i.e., consultation, testimony by deposition or testimony at trial, etc.
21. A complete list of each article, pamphlet, book, book chapter, or other document upon which you have read and determined does not support any of the expert opinions you have in this case.

22. All exhibits which you plan to discuss or use at trial.
23. Provide the fee agreement for this case and any other cases where you were named as an expert by Attorney Patricia Harrison

Exhibit 3. Plaintiff's Motion for Protective Order and Other Relief

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Laura M. Cole, as Personal Representative	)	
Of The Estate of Edward Mims,	)	C.A. No.: 2007-CP-40-3365
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION
	)	FOR PROTECTIVE ORDER AND
	)	OTHER RELIEF
The South Carolina Department of	)	
Disabilities and Special Needs, Kathi Lacy,	)	
and Stan Butkus,	)	
<u>Defendants.</u>	)	

TO: DEFENDANTS ABOVE NAMED BY AND THROUGH THEIR ATTORNEY;

I. STATEMENT OF ISSUES

Plaintiffs move for a protective order pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure and an order requiring Defendants to pay the fees and costs of depositions of expert witnesses and time spent preparing to testify in depositions. Plaintiffs also request an order requiring the participation of the Chairman of the South Carolina Department of Disabilities and Special Needs and the individual defendants to attend the mandatory mediation. Plaintiffs also seek payment of legal fees and costs associated with this motion.

II. PROCEDURAL HISTORY

The deadline set by this Court for discovery in this case was May 31, 2019, and that deadline has been repeatedly extended upon the requests of Defendants' counsel. On June 3, 2019, three days after the deadline for discovery, counsel for Defendants mailed five subpoenas "for records" to five of the Plaintiffs' witnesses, instructing the witnesses that responses must be provided by June 17.

Exhibit 1.

In addition to being served out of time, none of the witnesses were personally served, as required by Rule 45(b) which provides:

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j).

The subpoenas served upon Lennie Mullis, Jacquelyn Abney and Sandra Ray were also not issued from the court in the county in which those non-parties reside, as required by Rule 45.

III. BACKGROUND

This lawsuit was filed in 2007 and an amended complaint was filed in 2008. Defendants moved for dismissal, claiming that Mims' amended complaint was not timely served. This Court originally denied that motion, but then dismissed Mims' lawsuit on the grounds of untimely service after a hearing on the motion to reconsider. *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 343-44, 732 S.E.2d 395, 396 (2012). Mims appealed the dismissal, and the South Carolina Supreme Court found the amended complaint was timely served. *Id.* On remand, Defendants moved for summary judgment, which was granted by this Court. One of the grounds argued by Defendants was again that the complaint was not timely filed.

The South Carolina Court of Appeals reversed and remanded Mims's case for trial. *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388 (Nov. 8, 2017). During these protracted proceedings, Edward Mims died and his Estate was substituted. The Court of Appeals issued a substituted opinion on February 21, 2018, remanding for trial Mims' claims for violation of Section 1983 and his tort claims for negligence/gross negligence. *Id.* The South Carolina Supreme Court denied Defendants' petition requesting *certiorari* on August 3, 2018.

During the first ten years of this litigation, Defendants took only two depositions. On September 28, 2018, Defendants moved for a continuance, informing the Court that they intended to take 40 additional depositions. Over the objections of the Plaintiff, the deadline to complete discovery was extended for ninety days. Then, on December 6, 2018, Defendants sought another extension of the deadline for discovery, and the deadline for completion of discovery was extended until March 1, 2019. Defendants took numerous depositions, including the depositions of Lennie Mullis and Deborah McPherson. The deadline was yet again extended to May 31, 2019.

At the start of the trial in another case involving DDSN, on May 6, 2019, counsel for the DDSN Defendants caused witnesses (who were parties in that case) to be excluded, because they were not personally served.

On May 30, 2019, Defendants sought yet again to extend the deadline for discovery, but the personal representative for the Estate of Edward Mims objected to further delay and did not consent to another extension of the discovery deadline. *Exhibit 2*. Instead, Plaintiffs' counsel agreed to very limited discovery, allowing only the taking of depositions of several expert or hybrid experts who had not been previously deposed. This agreement was conditioned upon Defendants agreeing to make arrangements prior to the depositions being taken to pay the deponents' fees and costs, as provided in Rule 26(b)(4) and that the mandated mediation and trial not be delayed by the taking of those depositions. Defendants' counsel objected paying the fees of those expert witnesses. *Exhibit 3*. Plaintiffs did not agree to extend time for discovery for any other purpose or under any other conditions.

Three days after the deadline for discovery had passed, Defendants' counsel mailed subpoenas to five witnesses. Two of these witnesses had already been deposed. *Exhibit 1*. The

service of these subpoenas did not comply with the requirements for service on non-parties as set forth in Rule 45.

IV. REQUEST FOR A PROTECTIVE ORDER

None of the persons who received a subpoena are parties to this action. A person who is not a party may be compelled to produce documents only as provided in Rule 45 of the South Carolina Rules of Civil Procedure. That rule requires at Rule 45(c)(1) that:

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

The Court may quash a subpoena for production or inspection directed to a non-party if it fails to allow reasonable time for compliance; or subjects a person to undue burden. Plaintiffs hereby move for a protective order quashing the subpoenas sent after the May 31, 2019 deadline for discovery. Grounds for this motion include:

1. That the subpoenas were served after the repeatedly extended deadline for discovery;
2. That the subpoenas were not served upon the expert witnesses by personal service;
3. That the subpoenas are burdensome;
4. Some of the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive;
5. Defendants have had ample opportunity by discovery in the action to obtain the information sought prior to the deadline of May 31;
6. The burden and expense to the witnesses outweighs the likely benefit, taking into account the needs of the case, and the parties' respective resources;

7. The subpoenas seek discovery stored electronically that is not reasonably accessible because of undue burden and cost;
8. Defendants failed to comply with the rule regarding service in the county of the witness as required by Rule 45(b)(1);
9. Responses to the subpoenas would require review of more than a decade of records, many of which are not readily accessible;
10. Defendants served the subpoenas out of time for the purpose of delay.

Plaintiffs respectfully request that the Court quash the subpoenas and order Defendants to pay the legal fees and costs associated with this motion. Plaintiffs request an order prohibiting Defendants from attempting to exclude expert witnesses who were disclosed, but were not deposed by Defendants' counsel prior to the discovery deadline.

V. REQUEST FOR ORDER REQUIRING DEFENDANTS TO PAY FEES AND COSTS OF EXPERT WITNESSES

Plaintiffs voluntarily agreed to produce several expert witnesses to be deposed (but did not agree to production of records as set forth in the subpoenas), despite Defendant's counsel failing to depose these persons prior to the discovery deadline. This agreement was conditioned, however, upon Defendants agreeing ahead of time to pay the fees and costs of the expert witnesses, as required by Rule 26(4)(C). The Note to this Rule makes clear that the party seeking discovery must pay these costs and fees: "The discovering party is specifically made responsible for reasonable fees and expenses incurred in traveling to this state, as well as time spent responding to the discovery." Instead, Defendants' counsel argued that they were not responsible for paying the experts' fees for preparing for and attending depositions, which is in clear violation of those rules. *Exhibit 3*.

Rule 45(c)(3)(B)(iii) provides that if a subpoena:

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and *assures that the person to whom the subpoena is addressed will be reasonably compensated*, the court may order appearance or production only upon specified conditions.

In *James v. S.C. DOE*, 393S.C. 440, 449 (Ct. App. 2011), the South Carolina Court of Appeals interpreted Rule 26 to require that the expert witness be paid for both time and expenses he “spent in travel and in responding to discovery” ...

Plaintiffs request an order requiring Defendants to pay fees and costs incurred by expert witnesses’ fees for time spent traveling to, attending and preparing for depositions, and that travel costs be paid prior to their depositions being taken.

VI. REQUEST FOR AN ORDER MANDATING ATTENDANCE AT MEDIATION

Plaintiffs respectfully request an order requiring the Chairperson of the South Carolina Disabilities and Special Needs Commission to attend mediation and for the members of the Commission to be informed about the mediation. South Carolina ADR Rule 6 requires all attorneys to “fairly and objectively inform their clients about mediation and arbitration.” Rule 6(a). The following persons are required by Rule 6(b) to “physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

- (1) The mediator;
- (2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or **in the case of a governmental agency, a**

representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;

- (3) The party's counsel of record, if any; and
- (4) For any insured party against whom a claim is made, **a representative of the insurance carrier** who is not the carrier's outside counsel and who has full authority to settle the claim.

The practice of Defendants' counsel has been to have counsel and only a representative of the Insurance Reserve Fund attend the mediation. In the past, DDSN Commissioners (the governing board of DDSN) have not even been informed prior to mediation conferences or given the opportunity to attend. Rule 6 clearly indicates that both a representative of the Insurance Reserve Fund and a representative of [DDSN] with full authority to negotiate on behalf of the agency and *recommend a settlement to the appropriate decision-making body of the agency must attend the mediation conference.*

VII. MOTION FOR LEGAL FEES AND COSTS

In addition to fees and costs incurred by the expert witnesses, Rule 26(4)(C) provides that upon motion, the Court may require a party seeking discovery to pay "a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert." This case was brought to enforce Mims' rights under the Civil Rights Act and his counsel is also entitled to payment pursuant to 42 U.S.C. 1988. *Doe v. Kidd III*, 656 F. App'x 643, 658 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 638, 196 L. Ed. 2d 520 (2017). Plaintiff requests an order requiring Defendants to pay legal fees and costs associated with these subpoenas, the depositions of experts and this motion.

Respectfully submitted,

s/Robert C. Childs, III

Robert C. Childs, III, #1218
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s/Patricia Logan Harrison

Patricia Logan Harrison
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Attorneys for the Plaintiff

Date: June 17, 2019

Exhibit 4. Email from Harrison offering conditional extension of discovery

From: Patricia Logan Harrison
Sent: Friday, May 31, 2019 2:06 PM
To: kwoodington@dml-law.com; Daniel C. Plyler; Patricia Logan Harrison; Robert Childs
Subject: FW: Mims revisions

Gentlemen, we previously agreed to extend the deadline for discovery until May 31 and attended multiple depositions. We spoke with our client after you requested another extension and she would not agree to a general extension of the deadline. She informs us that Mrs. Mims' health is not good and that she is anxious to move forward.

We will, under the conditions set forth herein, agree to extend the time for you to depose the experts we currently intend to use, so long as we agree that this will not delay the deadline for mandated mediation or delay the trial. In order to extend the deadline for those experts, we will need for you to agree to making arrangements ahead of their depositions to pay their expenses and the costs required by the Rules.

We will supplement today the responses as you recently requested, for the experts we intend to use. We learned this week that Ms. Hoover checked with the Nursing Board and that they will not allow her to testify. After the murder of her son, she dropped her license as an RN. We will identify in our supplemental response we'll send you later today the RN we intend to present in her place.

Thank you for your cooperation in this matter.

Trisha and Robbie

Exhibit 5. Emails from Respondents' counsel re discovery.

From: Daniel C. Plyler
Sent: Monday, June 17, 2019 11:29 AM
To: Patricia Logan Harrison; Kenneth P. Woodington; robert@lawyerchilds.com
Cc: Melissa S. Segear
Subject: RE: Objections of Deborah McPherson

Subpoenas to non-parties are not governed by the Discovery deadlines, so that argument is without merit. Furthermore, these "objections" are meritless. You named her as an "expert" in this case. She either has a file for this case, or she does not.

We will go ahead and prepare our Rule to Show Cause as to Ms. McPherson and Ms. Mullis, and get those filed. They can appear in Court and explain to the Judge why they believe they do not have to comply with a subpoena, when they have been named as "experts" in a case.

Sincerely,

Daniel C. Plyler

DAVIDSON, WREN & PLYLER, PA
1611 Devonshire Drive, Second Floor
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From: Patricia Logan Harrison [mailto:pharrison@loganharrisonlaw.com]
Sent: Sunday, June 16, 2019 4:33 PM
To: Daniel C. Plyler; Kenneth P. Woodington; Patricia Logan Harrison
Subject: Objections of Deborah McPherson

Attached are objections of Deborah McPherson. I have informed her that we believe that the subpoena was not properly served and it was clearly served out of time.

We intend to file a motion for a protective order.

Trisha Harrison

From: Daniel C. Plyler
Sent: Friday, June 14, 2019 9:54 AM
To: Patricia Logan Harrison; Kenneth P. Woodington; Robert Childs
Subject: RE: Mims expert fees

Patricia:

Our subpoenas to your "experts" are standard practice. They simply ask that these experts, which you identified as witnesses in this case, provide their file on this matter. This should not be an overly time-consuming exercise. Simply put, if they truly are "experts" prepared to offer opinions in this case, they should have a file on this case, which should include all the materials they have reviewed for this case, their fee agreement and/or fee schedule, all correspondence regarding this case, etc.

If you can point to any authority that states we are required to "pay" your experts for the simple task of responding to a subpoena for information regarding this case, then please provide it and we will review it and make a decision, but I have a difficult time fathoming why this should be a difficult task. Furthermore, I do not believe you have standing to try and quash these subpoenas, nor am I certain that any such motion would be timely at this point, but feel free to do what you believe is best. I will state that if we do not receive adequate responses in a timely manner we will be filing rule to show cause as to each "expert" that fails to timely respond, and will be asking that these "experts" be excluded from the trial of this matter.

Sincerely,

Daniel C. Plyler

DAVIDSON, WREN & PLYLER, PA
1611 Devonshire Drive, Second Floor
Post Office Box 8568
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From: Patricia Logan Harrison [mailto:pharrison@loganharrisonlaw.com]
Sent: Thursday, June 13, 2019 11:19 PM
To: Kenneth P. Woodington; Daniel C. Plyler; Robert Childs; Patricia Logan Harrison
Subject: RE: Mims expert fees

Ken and Daniel, I've not heard from you regarding making arrangements for payment of expert witness fees. We'll be filing a motion to quash and would like to schedule a meeting to discuss this issue.

Thanks.

T

Sent from Mail for Windows 10

From: Patricia Logan Harrison
Sent: Sunday, June 9, 2019 9:57:35 PM
To: kwoodington@dml-law.com; Daniel C. Plyler; Patricia Logan Harrison; Robert Childs
Subject: Mims expert fees

Ken and Daniel, we need to make arrangements for payment to expert witnesses. They are spending considerable time locating the information you requested. Given the passage of time and the difficulty finding old records, they need additional time to respond.

I'll be getting their rates to you once we get the Kobe JA and brief filed on Tuesday.

In the meantime, they are requesting an additional 10 days to respond. Please advise.

Thanks.

Trisha

Exhibit 6. Plaintiff's Supplement to Motion for Protective Order and Other Relief

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Estate of Edward James Mims, Laura M.
Cole, Personal Representative, Respondent,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
Petitioners.

Civil Action Number 07-CP-40-3365

Plaintiff's Supplement to Motion for Protective Order
and Other Relief

I. Statement of the Issues

Plaintiffs hereby supplement their Motion for a Protective Order and other relief. Plaintiffs moved on June 17, 2019 for a protective order pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure and an order requiring Defendants to pay the fees and costs of depositions of expert witnesses and time spent preparing to testify in depositions. Plaintiffs also requested an order requiring the participation of the Chairman of the South Carolina Department of Disabilities and Special Needs and the individual defendants to attend the mandatory mediation. Plaintiffs also seek payment of legal fees and costs associated with this motion.

II. Supplemental History

During discovery, Defendants deposed only three of the hybrid witnesses named in this case. After the close of discovery, which had already been extended multiple times by request of

Defendants, Defendants' counsel served defective and burdensome subpoenas upon Plaintiffs' expert and hybrid expert witnesses, including two of the witnesses who had already been deposed. These subpoenas would require weeks to gather the information requested and they were served on nonparties nearly a month after the close of discovery.

Plaintiffs have voluntarily offered to make the expert witnesses not previously deposed available for a deposition conditioned upon an agreement that Defendants will pay the fees for time spent preparing for and attending the depositions, as required by the South Carolina Rules of Civil Procedure. Defendants have either ignored this offer or have refused to discuss the payment of fees of the expert witnesses. Defendants have still not paid the fees incurred by one expert (Richard Magner) for attending his deposition.

On or about June 25, 2019, Defendants' counsel caused four of the expert or hybrid witnesses to be personally served with burdensome subpoenas, while still refusing to pay the costs of gathering records or preparing for depositions. Affidavits of three of these witnesses (who have already been deposed) are attached as Exhibit 1, Exhibit 2 and Exhibit 3.

IV. Request for a Protective Order

Defendants have violated Rule 45(c)(1) which requires them to "take reasonable steps to avoid imposing undue burden or expense" on a nonparty. That Rule authorizes the court to enforce this duty and to impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

Plaintiffs have asked this Court to quash these subpoenas because they failed to allow reasonable time for compliance; they have subjected nonparties to undue burden and Defendants have refused to pay the fees of expert witnesses to comply with the subpoenas. Plaintiffs restate

and incorporate by reference their June 17, 2019 motion for a protective order quashing all subpoenas sent after the May 31, 2019 deadline for discovery.

Plaintiffs respectfully request that the Court quash the subpoenas and order Defendants to pay the legal fees and costs associated with these motions. Plaintiffs request an order prohibiting Defendants from attempting to exclude expert witnesses who were disclosed but were not deposed by Defendants' counsel prior to the discovery deadline.

V. Request for Order Requiring Defendants to Pay Fees and Costs of Expert Witnesses

Plaintiffs also restate their motion requesting an order paying the fees of experts and hybrid experts pursuant to Rule 26(4)(C).

Respectfully submitted,

s/Robert C. Childs, III
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ATTORNEYS FOR THE PLAINTIFF

July 8, 2019

Exhibit 7. Statements of Non-Party Witnesses.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS**

Estate of Edward James Mims, Laura M.
Cole. Personal Representative, Respondent,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
Petitioners.

Civil Action Number 07-CP-40-3365

EXHIBIT 1

Second Affidavit of Deborah McPherson

OBJECTIONS OF DEBORAH McPHERSON

I was personally served with the attached subpoena, directing me to provide records in the case of *Cole v. DDSN et. al.* by July 8, 2019. I am not a party to this lawsuit and I object to the subpoena on the following grounds and any other relevant grounds that may be provided to the Court by counsel for the Estate of Edward Mims:

1. I am the primary caregiver of my adult daughter who has intellectual disabilities, who requires around-the-clock supervision, and responding to the subpoena is unduly burdensome.
2. I base these statements on my personal experience as a former Commissioner of DDSN (serving 2010-2014) and, before my service on the governing board of the agency, working for 6 ½ years in the director's office.
3. I previously attended a deposition on February 22, 2019 in this case and I responded to all of the questions asked by Mr. Plyler for several hours, without being compensated for my time or the time spent in preparation for my deposition.
4. I attempted to respectfully answer Mr. Plyler's questions thoroughly during that deposition, but I felt that his questioning rose to the level of harassment when he did not get the answers he wanted.
5. I found it quite offensive that Mr. Plyler repeatedly challenged my commitment as an advocate for persons who have disabilities because I resigned as a member of the board of directors of the Babcock Center after the director refused to report the rape of an elderly client by a much younger housemate.
6. I provided Mr. Plyler with all of the information he requested during that deposition regarding my education and professional background and the information he now demands is redundant.
7. He had the opportunity to obtain any other information he requested during my deposition.
8. Although I was identified as a witness many years ago, before my appointment to the Commission, DDSN never made any attempt to obtain the information they now demand.
9. Indeed, as Commissioners, we were kept in the dark about litigation and when the Davidson firm did meet with Commissioners to review legislation, we were not provided with an accurate assessment of cases, based on my later knowledge of how the cases were resolved by the Courts.
10. It is common knowledge in the disability community in South Carolina that this law firm will drag out cases and try to starve out plaintiffs by driving up litigation costs and

delaying trials, forcing families to give up or to settle for less than the case is worth.

11. As a Commissioner of DDSN, we were never allowed to vote on whether to continue litigation or to settle cases and when we attempted to obtain information about cases, we were instructed that we were interfering with management.
12. I know from personal experience talking with providers of DDSN services that they are reluctant to advocate or to testify for clients because of the history of retaliation, particularly retaliation by Kathi Lacy.
13. Families fear that DDSN will reduce or terminate their services if they challenge actions taken by DDSN, and they know that their providers are also fearful, so that it is difficult to locate witnesses.
14. It is difficult enough already for plaintiffs to locate witnesses who have personal knowledge about the operation of DDSN programs, not only because of their limited financial circumstances and the years-long delays caused by this law firm, but also because of the history of retaliation against persons who testify or provide affidavits in legal cases.
15. It is also common knowledge in the disability community of families and providers of DDSN services that individuals and providers who testify for and advocate for persons who have filed litigation against DDSN have been subjected to retaliation.
16. Forcing witnesses who are professionals to dig through decades of records without compensation would make it even harder for persons who have been injured in DDSN programs to be willing to testify.
17. Very few attorneys in South Carolina have been willing to take cases against DDSN because of the unreasonable and protracted litigation tactics of this law firm.
18. Much of the information demanded in the subpoena is in the possession of DDSN and/or its officers and/or Commissioners and the information can be obtained from those persons.
19. Any communications I had with DDSN Commissioners or employees of the agency, including emails, are in the possession of the agency and those records can be more readily retrieved by the agency's paid IT staff.
20. Responding to the subpoena would require me to go through more than twelve years of paper and computer records in storage and those records are not readily available.
21. The information requested by Defendants' counsel is not reasonably accessible because of undue burden or cost and DDSN has not agreed to pay for my time or the cost of locating and duplicating those records.

22. The information requested is obtainable from other sources that are more convenient, less burdensome and less expensive.
23. The burden and expense of the proposed discovery outweighs the likely benefit.
24. I am requesting protection of the Court from this unduly burdensome subpoena which was served after the close of discovery.
25. I am also requesting, for myself and my family, protection from retaliation for testifying.

Respectfully submitted,


Deborah McPherson

June 27, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Estate of Edward James Mims, Laura M.
Cole, Personal Representative, Respondent,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
Petitioners.

Civil Action Number 07-CP-40-3365

Exhibit 2

Second Affidavit of Lennie Mullis

OBJECTIONS OF LENNIE MULLIS

A process server delivered the attached subpoena to my house on June 25, 2019, directing me to provide records in the case of *Cole v. DDSN et. al* by July 8, 2019. I agreed to testify in this lawsuit, but I am not a party to that lawsuit. I object to the subpoena on the following grounds and any other relevant grounds that may be provided to the Court by counsel for the Estate of Edward Mims:

1. The three page subpoena requests information going back more than fifteen years and would require many, many hours to respond and would take time away from the clients I serve.
2. I answered all of the questions asked by Defendants' counsel about my education and experience when I attended my deposition in this case and the questions in the subpoena are redundant to the information I have already provided.
3. I provided behavior support services to Edward Mims many years ago and all of my billing records and service notes should be in the possession of DDSN, which has IT staff that should be able to more readily locate those documents.
4. After I provided an affidavit in this case and testified in other cases, DDSN terminated my certification as a provider of behavior support services and twice the South Carolina Administrative Law Court ruled that their actions were arbitrary and capricious and in violation of my due process rights.
5. The second time DDSN terminated my certification, DDSN notified all of my clients that they could no longer use my services, despite the fact that I filed a timely appeal that by federal law prohibited them from doing that.
6. After I provided affidavits and advocacy in one case in Spartanburg County, DDSN quit paying me to provide services to that individual for nearly two years.
7. In that case, the case manager who testified for and advocated for that same client called me and told me that she was being threatened by DDSN and she suddenly moved out of state, without notice to dozens of clients she had served for many years, which was very much out of character for her.
8. DDSN, and particularly Stan Butkus and Kathi Lacy have historically retaliated against providers and families who have advocated in court proceedings for DDSN clients who have appealed decisions of the agencies or have filed lawsuits against the agencies.
9. This makes it very difficult for persons who sue DDSN to locate witnesses willing to participate in legal proceedings against the agency or its officials, because providers are fearful of retaliation, and that fear is with good reason.
10. I am the owner of a business and responding to the subpoena is unduly burdensome and it

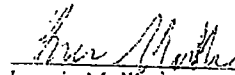
would require me to go through records dealing not only with this case, but with other cases that were closed years ago.

11. Defendants' counsel has not offered to pay me for my time gathering the information they demand that I produce or for the cost of production of those old records.
12. The only records I have in my file on Edward Mims consist of (1) electronic records of my work with him from the time when he was removed from Kensington, when I was appointed by the probate court, (2) the report I prepared for the court and (3) an affidavit I signed many years ago related to this case.
13. In order to produce the electronic records dating back to the discharge of Edward Mims would require my computer specialist to attempt to locate records stored on an old computer in a format I do not currently use.
14. This lawsuit was filed in 2007 and I was identified as a witness many years ago, but DDSN failed to take my deposition until 2019 or make any attempt to obtain documents during discovery when the records they request were more readily available.
15. It is my understanding that Plaintiffs' counsel has already provided my report I filed with the Probate Court and the affidavit I signed, which describes my experience of being denied access to Edward at Kensington three times, despite presenting a court order to examine Edward.
16. I believe that this subpoena has again been issued for the purpose of delay, annoyance and harassment and in an attempt to obstruct the Estate's ability to present evidence at trial by wearing down witnesses and driving up the cost of litigation.
17. Defendants have not agreed to pay me for my time or even for the costs related to retrieving electronic records more than a decade old and it is my understanding that they have informed Plaintiffs' counsel that they have indicated that they do not intend to pay the cost of experts responding to their subpoenas.
18. Much of the information requested is in the possession of DDSN and/or its officers and/or Commissioners and the information can more readily be obtained from those persons.
19. The information requested by Defendants' counsel is not reasonably accessible because of undue burden or cost, which Defendants have not agreed to pay.
20. The information requested is obtainable from other sources that are more convenient, less burdensome and less expensive.
21. The burden and expense of the proposed discovery outweighs the likely benefit.
22. Defendants had an opportunity to obtain any information they needed when they required

me to attend a deposition prior to the close of discovery.

23. In my experience, this is typical of this law firm and DDSN to harass witnesses and to delay proceedings, with no regard to the consequences to families, witnesses or plaintiff's counsel.
24. My opinions in this case are based on more than thirty years working as a professional serving persons with developmental disabilities and the demand that I produce, "by chapter and page," a list of all "articles, treatises, texts, technical bulletins, professional guidelines, periodicals and papers" and "a complete list of literature" supporting my findings is unreasonable, as it would take weeks, if not months to review an list that literature.
25. An example of the burdensome nature of this subpoena is question 11 which demands that I produce a "complete list" of documents including "letters, notes, reviewers comments that in any way assess, review, evaluate, critique or criticize" any of my "published or unpublished studies, research, reports and other works."
26. Responding to that question would take weeks, if not months of time to review all of my studies, research, reports and other works.
27. For the reasons stated above and those contained in Plaintiffs' motions, I object to the subpoenas that were served upon me.
28. I am willing to testify in this case, but I request protection of the Court from the unreasonable demands of these subpoenas and I also request the Court's protection from retaliation.

Respectfully submitted,


Lennie Mullis

June 27, 2019

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Estate of Edward James Mims, Laura M.
Cole. Personal Representative, Respondent.

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
Petitioners.

Civil Action Number 07-CP-40-3365

EXHIBIT 3

Second Affidavit of Katherine Bagnol, MSW, CMC, NCG

OBJECTIONS OF MARY KATHERINE BAGNAL, MSW, CMC, NCG

I was personally served with a subpoena on June 24, 2019, directing me to provide records in the case of *Cole v. DDSN et. al.* I am not a party to this lawsuit and I object to the subpoena on the following grounds and any other relevant grounds that may be provided to the Court by counsel for the Estate of Edward Mims:

1. I am the owner of a business and responding to the subpoena is unduly burdensome and DDSN has not agreed to pay for my time preparing for a deposition or responding to their subpoena that was served after the deadline for discovery.
2. I served as a Commissioner of DDSN from 2005 until 2009, when I was succeeded by Deborah McPherson.
3. Prior to my appointment to the governing board of DDSN, I was appointed by the Probate Court as a Visitor in the guardianship proceedings for Edward Mims that Mrs. Mims filed in the Richland County Probate Court and I filed a report with that Court, which is contained in the Record on Appeal.
4. Other than that report, which has already been provided to DDSN, I did not maintain a file or notes on Edward Mims, and any information I had related to Edward Mims are described in that report.
5. Much of the information demanded in the subpoena is in the possession of DDSN and/or its officers and/or Commissioners and the information can be obtained from those persons.
6. Responding to the subpoena would require me to spend many hours attempting to locate records from fourteen years ago which are not readily available and likely have been destroyed. I am only required to save records for seven years.
7. The information requested by Defendants' counsel is not reasonably accessible because of undue burden or cost and DDSN has not agreed to pay my hourly rate to prepare for a deposition or to attend a deposition.
8. The information requested is obtainable from other sources that are more convenient, less burdensome and less expensive.
9. Defendants' counsel has not offered to pay me for my time gathering the information they demand that I produce or for the cost of production of those old records.
10. I was identified as a witness many years ago, but DDSN failed to take my deposition or to request any information from me until after discovery was closed.
11. My opinions in this case are based on more than three decades working as a professional

serving elderly and disabled persons, and producing "by chapter and page," a list of all "articles, treatises, texts, technical bulletins, professional guidelines, periodicals and papers" and "a complete list of literature" that support my findings would take weeks, if not months to prepare and list that literature.

12. An example of the burdensome nature of this subpoena is the demand that I produce a "complete list" of documents including "letters, notes, reviewers comments that in any way assess, review, evaluate, critique or criticize" any of my "published or unpublished studies, research, reports and other works" that I may rely upon at trial.
13. Responding to that question would again take weeks, if not months of my time to review all of my studies, research, reports and other works which I might rely upon in responding to questions at trial about this case.
14. The burden and expense of the proposed discovery outweighs the likely benefit and any information I have regarding services provided to Edward Mims are contained in my report to the Court.
15. Information about the administration of DDSN programs during my tenure on the Commission is readily available to DDSN in the audits conducted by DHHS, USC School of Public Health, Carolina Medical Review and the South Carolina Legislative Audit Counsel, which have been provided to DDSN.
16. I object to the subpoena and I support plaintiff's motion to quash.
17. I respectfully request protection from the court not only from the undue burden of responding to the subpoena, but I also request an order prohibiting DDSN or its officials or former officials from retaliating against me for testifying in this case.
18. My hourly rate for preparation time is \$250 per hour and appearance time in court or at a deposition is \$300 per hour. A retainer of \$5,000 is expected if I am required to gather the documents required by the subpoena.

Respectfully submitted,


Mary Katherine Bagnol, MSW, CMC, NCG
Senior Matters CEO

July 6, 2019

Exhibit 8. Order dated August 22, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Estate of Edward James Mims,
Laura M. Cole, Personal Representative,
Plaintiff,

Civil Action No. 07-CP-40-3365

v.

ORDER

The South Carolina Department of
Disabilities and Special Needs,
Kathi Lacy and Stanley Butkus,
Defendants.

This case came before the Court for a hearing on July 30, 2019 regarding two motions. On May 30, 2019, Defendants filed a Motion to Compel Discovery and for Extension of Scheduling Order Deadlines. On June 17, Plaintiff filed a Motion for Protective Order and for Other Relief. After hearing argument from both sides, the Court GRANTS Defendants' motion and DENIES Plaintiff's motion as follows:

1. Defendants' Motion to Extend Scheduling Order Deadlines by 90 days is GRANTED. This will necessarily remove this case from the September 3, 2019 trial roster. Discovery in this case shall conclude 90 days after the date of this Order.
2. Mediation shall occur within 30 days after the close of discovery.
3. If the case is not resolved through mediation, the parties are instructed to contact the Chief Administrative Judge for the purpose of scheduling a date certain trial date.
4. Plaintiff's Motion for Protective Order regarding the document subpoenas is DENIED. The witnesses must respond to the subpoenas within 15 days of this Order.
5. Finally, Plaintiff's motion to have certain DDSN officials present at mediation is DENIED.

AND IT IS SO ORDERED.

The Honorable Robert E. Hood
Judge, Fifth Judicial Circuit

Columbia, South Carolina

August _____, 2019



Richland Common Pleas

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center Inc , defendant,
et al
Case Number: 2007CP4003365
Type: Order/Scheduling Order

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-08-21 15:40:03 page 3 of 3

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Official File Stamp: 08-22-2019 09:34:14 AM

Court: CIRCUIT COURT

Common Pleas

Richland

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center
Inc , defendant, et al

Document(s) Submitted:

Order GRANTING Defendants Motion to Extend
Scheduling Order Order GRANTING Defendants
Motion to Extend Scheduling Order, Plaintiffs
Motion for Protective Order Regarding
Subpoenas is DENIED, Plaintiffs Motion to Have
Certain DDSN Officials presen...

Filed by or on behalf of: Robert E. Hood

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The following people were served electronically:

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Carolina Dept of Health and Human Services

William H. Davidson, II for Stanley Butkus

Robert Clyde Childs, III for Margaret Mims et al

Leslie A. Cotter, Jr.

Kenneth P. Woodington for Stanley Butkus, South
Carolina Dept of Health and Human Services

Patricia Logan Harrison for Margaret Mims et al

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:

Susan Dowling

Sue Slater
Craig Stoxen
Tonya Bradford

Exhibit 9. Plaintiffs' Motion to Reconsider, Alter or Amend

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS**

Estate of Edward James Mims, Laura M.
Cole, Personal Representative, Respondent,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy, and Stan Butkus,
Petitioners.

Civil Action Number 07-CP-40-3365

Plaintiff's Motion to Reconsider, Alter or Amend
Order dated August 22, 2019

YOU WILL PLEASE TAKE NOTICE THAT the Estate of Edward Mims, by and through its undersigned counsel, hereby moves the Court for an order pursuant to SCRCP Rule 59(e) reconsidering, altering, or amending the Court's Order issued on August 22, 2019 and requests a hearing on this motion. That order granted Defendants' motion to extend the time for discovery, directed witnesses to respond to subpoenas within 15 days of the order. It denied Plaintiffs' June 17, 2019 and July 8 motions (1) for a protective order, pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, (2) for an order requiring Defendants to pay the fees and costs of depositions of expert witnesses, including for time spent preparing to testify in depositions; (3) for an order requiring participation of the Chairman of the South Carolina Department of Disabilities and Special Needs and the individual defendants to attend the mandatory mediation; and (4) for an order prohibiting Defendants from retaliating against the witnesses.

This motion is made pursuant to S.C.R.C.P. Rules 52 and 59, and it is supported by the South Carolina Rules of Civil Procedure, the common law of this State, and such legal memoranda and arguments as Plaintiffs' counsel may present to the Court at or prior to a hearing on this motion. In accordance with S.C.R.C.P. Rule 11, counsel for Plaintiffs assert that they have consulted with opposing counsel in an attempt to resolve this matter.

Pursuant to SCRCP Rules 52 and 59, Plaintiff moves this Court to reconsider, alter, or amend its Order of August 22, 2019 for the reasons set forth below.

A. The Order did not address all of the issues and arguments raised by the Estate.

The Order should be reconsidered, altered, or amended because the Court did not address all of the issues and arguments raised in Plaintiffs' motions, at the hearing and in the affidavits of nonparties, including the following issues and arguments:

1. Defendants had ample opportunity by discovery in the action to obtain the information sought prior to the deadline of May 31, 2019 and the subpoenas constituted an improper violation of the May 31, 2019 discovery deadline. This lawsuit was filed in 2007 and Defendants took only two depositions during the first eleven years. All of the witnesses except one were identified more than a decade ago. On the second remand from the appellate Courts, this Court granted multiple extensions at the request of Defendants, allowing Defendants more than sufficient time to take depositions and to discover documents that were requested after the close of discovery. The order did not contain facts and conclusions of law addressing why an additional ninety days of discovery should be allowed under the circumstances set forth in Plaintiffs' motions.
2. Defendants' counsel failed to take reasonable steps to avoid imposing undue burden or expense on persons who are not parties to the action. Plaintiffs refer to the affidavits

signed by the witnesses previously filed in this action, which are incorporated herein by reference. The order did not address the issues raised in these affidavits, including whether responding to the subpoenas imposed an undue burden. The order did not set forth facts and conclusions of law on this issue.

3. The order did not address the undue burden on the Plaintiff, who has limited funds to purchase depositions of dozens of witnesses called after remand, and even more sought after the close of discovery. The order did not set forth facts and conclusions of law on this issue
4. The subpoenas and this Court's August 22, 2019 order failed to allow reasonable time for compliance and subject witnesses to undue burden. See affidavits. The subpoenas require non-parties to spend an excessive amount of time attempting to locate records, some from more than ten years ago. The order did not address issues raised by the non-party witnesses in their affidavits as to the time required to comply with the subpoenas or set forth conclusions of law on this issue.
5. Some of the discovery sought is obtainable from some other sources that are more convenient, less burdensome, or less expensive. The order did not address the issue raised by Plaintiffs that many of the records requested are already contained in the record or are in the possession of DDSN and/or its employees, agents and Commissioners, or the expense of complying with Defendants' subpoenas. The order did not set forth facts or conclusions of law on this issue.
6. The burden and expense to the non-party witnesses outweighs the likely benefit, and the Court failed to take into account the needs of the case, and the parties' respective resources. The Court failed to take into account the seemingly unlimited resources of the

state to pay for discovery, that Defendants' counsel is being paid on an hourly basis to extend this litigation and the extremely limited resources available to the Plaintiff. Just one example is the requirement in subpoenas that the witness produce "*by chapter and page*," a list of all "articles, treatises, texts, technical bulletins, professional guidelines, periodicals and papers" and "a complete list of literature" that support their opinions, a task that the witnesses reported would take weeks, if not months to prepare. The order did not set forth facts or conclusions of law on this issue.

7. The subpoenas sought discovery stored electronically that is not reasonably accessible because of undue burden and cost and did not require Defendants to pay the cost for attempting to access those records, some of which likely have been destroyed. For example, Mullis informed the Court that these records were not only previously provided to DDSN, but also that they were so old that they are in a format that would require a computer expert to attempt to recover. Bagnol informed the Court that her professional standards only require her to retain records for seven years, and that records requested have been destroyed. In addition, both of these witnesses stated in their affidavits that their reports were provided to the Court or DDSN. Because responses to the subpoenas would require review of more than a decade of records, many of which are not readily accessible, the subpoenas are not only untimely, but they are unduly burdensome.

Plaintiffs relies upon all of the affidavits provided regarding the undue burden and costs of complying with the Court's order. The order did not set forth facts or conclusions of law on this issue.

8. Plaintiffs argued that Defendants served the subpoenas out of time for the purpose of delay and the Court did not address the issue of delay in this now twelve year old case,

including the fact that Edward Mims died during the court of litigation of this case and that Mrs. Mims is eighty years old and is in poor health. The order did not set forth facts or conclusions of law on this issue.

Payment of Fees and Expenses

The August 22, 2019 order did not address Plaintiff's issue of payment of fees and expenses to be incurred by the non-party witnesses in preparing for and attending any depositions agreed to or allowed by order of the Court. The Court did not address Plaintiff's request for an order requiring Defendants to pay fees and costs incurred by expert witnesses fees for time spent traveling to, attending and preparing for depositions, and that travel costs be paid prior to their depositions being taken. The order did not set forth facts or conclusions of law on this issue.

Request for Order Mandating Attendance at Mediation

Plaintiffs respectfully request reconsideration of the order denying Plaintiffs' request that the Chairperson of the South Carolina Disabilities and Special Needs Commission attend mediation and that the members of the Commission be informed about the mediation. The order did not address South Carolina ADR Rule 6, which requires all attorneys to "fairly and objectively inform their clients about mediation and arbitration" Rule 6(a). The order did not address Rule 6(b), which requires the following persons to "physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties or as ordered or approved by the Chief Judge for Administrative Purposes of the circuit:

- (1) The mediator;
- (2) All individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or **in the case of a governmental agency, a representative of that agency with full**

- authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency;
- (3) The party's counsel of record, if any; and
 - (4) For any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

Plaintiffs believe that this Rule demonstrates that **both** the IRF and a representative of DDSN must attend the mediation. Paragraph 2 requires a representative of the agency to attend mediation who has full authority to negotiate settlement, and separate Paragraph 4 requires attendance of an IRF representative with authority to settle. This Rule clearly requires both the agency and the IRF to attend the mediation. Only the governing board of DDSN has authority to approve a settlement. Plaintiffs call the attention of the Court to the fact that after the recent resignation of two DDSN Commissioners, only three Commissioners of the seven members required by statute remain in office. The order did not address the issue raised by Plaintiffs that, historically, DDSN Commissioners have not even been informed prior to mediation conferences or given the opportunity to attend. Former DDSN Commissioner, Deborah McPherson stated in her sworn statement that "As a Commissioner of DDSN, we were never allowed to vote on whether to continue litigation or settle cases and when we attempted to obtain information about cases, we were instructed that we were interfering with management."

Request for Protection from Retaliation

The order did not address the issue raised by two former Commissioners and a provider of Medicaid services who expressed legitimate concerns about the need for protection from retaliation by the Defendants. Former DDSN Commissioner McPherson expressed concern in her affidavit that witnesses are "reluctant to advocate or testify for clients because of the history of retaliation, particularly retaliation by Kathi Lacy." She reported that "providers are also

fearful, so that it is difficult to locate witnesses” and that Defendants’ law firm has a history of causing “years-long delays.” The order did not set forth facts or conclusions of law on this issue.

Conclusion

For the reasons set forth in Plaintiffs motions, those contained in the witnesses’ affidavits and those argued at the hearing, the Court should reconsider its opinion, deny Defendants’ motion and grant Plaintiff’s motion. Plaintiff requests a hearing on this motion.

Respectfully Submitted,

s/Patricia Logan Harrison
Patricia Logan Harrison
47 Rosemond Road
Cleveland, South Carolina 29635
(803) 360-5555
pharrison@loganharrisonlaw.com

Robert C. Childs, III
Childs Law Firm, LLC
2100 Poinsett Hwy, Suite D
Greenville, South Carolina 29609
(864) 242-9997
Fax (864) 242-9914
Robert@LawyerChilds.com

ATTORNEYS FOR THE PLAINTIFF

August 30, 2019

Exhibit 10. Order dated September 5, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Estate of Edward James Mims,	)	
Laura M. Cole, Personal Representative,	)	Civil Action No. 07-CP-40-3365
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
The South Carolina Department of	)	
Disabilities and Special Needs,	)	
Kathi Lacy and Stanley Butkus,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court upon a motion for reconsideration filed by Plaintiff. Specifically, Plaintiff's counsel filed a motion for reconsideration on August 30, 2019, asking the undersigned to reconsider the rulings in his August 22, 2019 Order. For the reasons set forth herein, Plaintiff's motion is **DENIED**.

The August 22, 2019 Order addressed two motions. Specifically, that Order denied Plaintiff's "Motion for Protective Order and Other Relief," which was filed by Plaintiff on June 17, 2019, as well as Plaintiff's "supplement" to that motion, which was filed by Plaintiff July 8, 2019. The August 22, 2019 Order also granted Defendants' "Motion to Compel Discovery and for Extension of Scheduling Order Deadlines," which was filed by Defendants on May 30, 2019.

As was stated in the August 22, 2019 Order, the Court held a hearing, on July 30, 2019, on Plaintiff's "Motion for Protective Order and Other Relief" and Defendants' "Motion to Compel Discovery and for Extension of Scheduling Order Deadlines." At that hearing the Court heard and considered the arguments from all parties with regards to both motions, and subsequently the Court decided to deny Plaintiff's motion in its entirety, and to grant Defendants' motion. Plaintiff's counsel

subsequently filed a "Motion to Reconsider, Alter or Amend," and Plaintiff states said motion is based on Rules 52 and 59(e), SCRCP. Plaintiff proceeds to alleged that the August 22, 2019 Order "did not address all of the issues and arguments raised by the Estate." *See*, Motion at pg. 2.

The undersigned has carefully and fully reviewed the Motion to Reconsider, Alter or Amend and hereby **DENIES** that motion. First, the Court is not required to set forth, on interlocutory Orders, specific findings of fact and/or conclusions of law. The August 22, 2019 Order is not a final Order or Judgment, and therefore Rules 52 and 59(e), SCRCP are not applicable to that Order. Therefore, for that reason alone, Plaintiff's motion can be, and hereby is, **DENIED**.

Furthermore, to the extent Plaintiff is asking the Court to reconsider its ruling contained in the August 22, 2019 Order, the Court finds Plaintiff has failed to make the requisite showing for why the Court should reconsider, alter or amend its ruling. The Court's August 22, 2019 Order makes it clear the Court considered all arguments made by Plaintiff's counsel in Plaintiff's written submissions, as well as at the oral argument on the motions in question. Having heard and considered those arguments, the Court decided to deny, in its entirety, Plaintiff's "Motion for Protective Order and Other Relief." Additionally, the Court decided to grant, in its entirety, Defendants' "Motion to Compel Discovery and for Extension of Scheduling Order Deadlines." The Court reiterates said rulings, with the following *caveat*.

Due to the delay in moving discovery forward in this case caused by Plaintiff's filing of the herein denied motion for reconsideration, the Court hereby Orders that the Scheduling Order in this matter shall be further modified as follows:

1. Discovery in this case shall conclude 90 days after the date this Order is signed and filed.
2. The witnesses must respond to Defendants' subpoenas within 15 days of this Order.

AND IT IS SO ORDERED.

The Honorable Robert E. Hood
Judge, Fifth Judicial Circuit

Columbia, South Carolina

September _____, 2019



Richland Common Pleas

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center Inc , defendant,
et al
Case Number: 2007CP4003365
Type: Order/Other

So Ordered

s/ R.E. Hood #2164

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Official File Stamp: 03-22-2019 10:30:53 AM

Court: CIRCUIT COURT

Common Pleas

Richland

Case Caption: Margaret Mims , plaintiff, et al vs Babcock Center
Inc , defendant, et al

Document(s) Submitted: Second Amended Scheduling Order trial not
before September 1 Second Amended
Scheduling Order trial not before September 1,
2019

Filed by or on behalf of: Jocelyn Newman

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Sue Slater

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Craig Stoxen
Tonya Bradford

Exhibit 11. Opinion of Attorney General dated September 24, 2019



ALAN WILSON
ATTORNEY GENERAL

September 24, 2019

Ms. Mary Poole
State Director
South Carolina Department of Disabilities and Special Needs
P.O. Box 4706
Columbia, SC 29240

Dear Director Poole:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks the following:

The South Carolina Department of Disabilities and Special Needs (DDSN) is governed by a Commission, defined in SC Code Ann. § 44-20-210 (Supp.2018). The DDSN Commission consists of seven members, from each of the South Carolina Congressional Districts, who are appointed by the Governor upon advice and consent of the Senate.

Currently, due to recent resignations, ... the DDSN Commission has only three members. In addition to planned and known Commission departures, a fourth vacancy occurred when the Commissioner from the 3rd District abruptly resigned on August 19, 2019. ...

As indicated in the statute, normally four members of the DDSN Commission would constitute a quorum so that a meeting could be convened pursuant to SC Code 30-4-20(d) (1986).

According to SC Code 30-4-20(e) (1986):

"Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

Thus it would appear that unless there are four members of the seven who are designated by the statute, there is no quorum for the Commission and no action can be taken.

DDSN respectfully requests an opinion from your office which would inform us as to whether the DDSN Commission can calculate a quorum based on the number of members currently appointed, three, which would mean that two members would be considered a quorum. Or is a quorum four members, based on the total number of seven, as required in the statute.

Law/Analysis

It is this Office's opinion that a court likely would hold that a minimum of four members of the DDSN Commission ("Commission") are required to constitute a quorum. As noted in the request letter, Section 44-20-210 created the Commission and outlined the terms of office for its members as follows:

There is created the South Carolina Commission on Disabilities and Special Needs. The commission consists of seven members. One member must be a resident of each congressional district appointed by the Governor upon the advice and consent of the Senate. They shall serve for four years and until their successors are appointed and qualify. Members of the commission are subject to removal by the Governor pursuant to the provisions of Section 1-3-240. A vacancy may be filled by the Governor for the unexpired portion of the term.

S.C. Code Ann. § 44-20-210 (emphasis added).

In Williams v. Benet, 35 S.C. 150, 14 S.E. 311 (1892), the Court expressed that the purpose of a quorum requirement is to allow a public body to conduct its business with less than the entire membership present.

The very purpose in providing for the transaction of business of any given body or tribunal by a quorum is to prevent the stoppage of the public business when a portion of the whole membership may, from any cause, fail to attend at the time appointed; and whether such failure results from death or some temporary cause cannot affect the question.

14 S.E. at 312 (emphasis added). This Office has not identified authority specific to the Commission's quorum requirements. The South Carolina Supreme Court has articulated that in the absence of such authority, the common law requires the presence of a majority of a public body to constitute a quorum.

In the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum. A member who recuses himself or is disqualified to participate in a matter due to a conflict of

interest, bias, or other good cause may not be counted for purposes of a quorum at the meeting where the board acts upon the matter.

Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) (citations omitted).

In Anderson Cty. v. Preston, No. 2017-001898, 2019 WL 3683575 (Aug. 7, 2019), the Court reaffirmed Garris when it declared a severance agreement approved by a county council to be null and void. The Court held that when the council approved the severance agreement, it did so without a quorum because four members of its seven member council were disqualified due to conflicts of interest. The Court concluded, "A majority of the seven-member Council requires four members to constitute a quorum. After removing the disqualified votes, however, only three of the Council members could count towards the quorum. Id. As such, a quorum did not exist." Id. at 9. These cases can be read to stand for the proposition that a public body is allowed to conduct its business on behalf of the public with less than its full body present. However, if a majority of that public body is unable to participate, whether because of death, resignation, or any other cause, it is unable to act.

This Office has previously opined regarding how to calculate the number of members necessary to constitute a quorum of a public body when there are vacancies on its governing body. This Office's August 6, 1979 opinion addressed the quorum requirements for the South Carolina Museum Commission when multiple members had resigned. Op. S.C. Att'y Gen., 1979 WL 43501 (August 6, 1979). The Museum Commission's enabling statute states it is "composed of nine (9) members who shall serve four (4) years terms and 'until successors are appointed and qualified.'" Id.

A question has been raised as to whether members who have resigned, but for whom successors have not been appointed, must be counted in determining if a quorum is present. It is my opinion that since a member cannot vacate his office until his successor is appointed and qualified, members who have submitted their resignations are still members of the Commission for the purposes of determining if a quorum is present.

Id. The opinion concluded by noting a Florida Supreme Court decision prohibited deducting "vacancies from death, resignation, or failure to elect" from the total membership of a body to determine if a quorum is present. Id. Based on the authorities discussed above, it is this Office's opinion that a court likely would hold that four members of the Commission are the minimum number which must be present to constitute a quorum.

Please note that the Governor is authorized to fill vacancies which occur on the Commission as "interim appointments" to allow the Commission to reach a quorum. When a vacancy occurs "in an office filled by an appointment of the Governor with the advice and consent of the Senate" during a recess of the Senate, the Governor is permitted to fill such a seat

and must report the interim appointment to the Senate and also forward a formal appointment at the Senate's next regular session. S.C. Code Ann. § 1-3-210; see Senate by & through Leatherman v. McMaster, 425 S.C. 315, 334, 821 S.E.2d 908, 918 (2018) (holding S.C. Code Ann. § 1-3-210 authorizes the Governor to make an interim appointment during "any recess of the Senate in which the vacancy existed."). As cited above, membership on the Commission is such an office because its members are "appointed by the Governor upon the advice and consent of the Senate." S.C. Code Ann. § 44-20-210. Such interim appointments would be a potential avenue for the Commission to meet its minimum membership level to constitute a quorum.

Alternatively, a court may well find that the Commission members' resignations were ineffective and compel their attendance until successors are qualified. In Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415, 417 (1964), the South Carolina Supreme Court interpreted a similar statute applicable to county election commissioner's terms of office as follows:

The foregoing statute provides that officers qualified thereunder 'shall continue in office until their successors are appointed and qualified.' The legislative intent to make provision against a situation where there would be no qualified commissioners to conduct and hold elections is clear. A proper interpretation of the statute makes it mandatory on the part of election commissioners to serve until their successors are appointed and qualify. Therefore the attempted resigned [sic] of these respondents was of no effect and their tenure in office, together with the duties and responsibilities thereof, must be held to continue, since no successors have qualified. This is in accord with the general rule that a public officer does not cease to be such even when his resignation is accepted, but continues in office until a successor is qualified where the statute or Constitution so provides.

245 S.C. at 34, 138 S.E.2d at 417; see also Op. S.C. Att'y Gen., 2013 WL 5763372, at 3 (October 10, 2013) (discussing Rogers to find that even after resigning his office, a magistrate was "required to continue discharging the duties of his office until his successor is appointed and qualified"); 1987 S.C. Op. Att'y Gen. 20 (January 12, 1987) (opining that S.C. Code § 14-23-1020 required a probate judge to continue in office until his successor qualifies); 8 S.C. Jur. Public Officers and Public Employees § 45 ("Even after his resignation is accepted, a public officer continues in office until a successor is qualified."). In reliance on Rogers, this Office's May 26, 1978 opinion discussed the impact of resignations on the Consumer Affairs Commission:

[M]embers who have resigned and have ceased participating in Commission affairs should be informed that they should remain upon the Commission. If they do not accede to this request, legal proceedings may be instituted to seek compliance. Those members who do, however, act in a continuing capacity will,

in my opinion, constitute the governing body of the South Carolina Consumer Affairs Commission.

I therefore advise that efforts should be made at once to secure the participation on the Commission of those members who have previously resigned. The assistance of this Office may be called upon in the securing of such attendance. If this is unavailing, the five present acting members may function in the conduct of the affairs of the South Carolina Consumer Affairs Commission in order to avoid a lapse of governmental functions.

1978 S.C. Op. Att'y Gen. 139 (1978).

This Office has addressed the seeming inconsistency of advising that resigning members of a public body can be held to continue in office and, at the same time, permit their seats to be filled by appointment. In a May 26, 1976 opinion, Attorney General McLeod advised Governor McNair that while such offices are not vacant, the officers only continue in office until their successors are appointed.

The members of the board presently serving are required to continue in office until their successors have been appointed and have qualified. Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415. After the expiration of their terms of office, they continue to serve in a de facto capacity, which is recognized as a 'vacancy' in office in the sense that it may be filled although there is a physical occupant of the office. Bradford v. Byrnes, 221 S.C. 255, 70 S.E. 228.

Accordingly, I advise that, in the opinion of this office, vacancies exist in the offices held by members of the board of registration who were appointed two years ago, and who have not subsequently been appointed, and that you may fill these vacancies at any time.

1970 S.C. Op. Att'y Gen. 99 (1970).

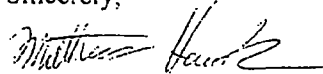
Conclusion

It is this Office's opinion that a court likely would hold that a minimum of four members of the DDSN Commission ("Commission") are required to constitute a quorum. As is discussed more fully above, to the extent that vacancies exist on the Commission, such vacancies do not reduce the count of members necessary to constitute a quorum. Because S.C. Code Ann. § 44-20-210 established the Commission as a seven member body, four members must be present to constitute a quorum. See Anderson Cty. v. Preston, No. 2017-001898, 2019 WL 3683575, at 9 ("A majority of the seven-member Council requires four members to constitute a quorum."). In

Director Mary Poole
Page 6
September 24, 2019

Rogers v. Coleman, 245 S.C. 32, 138 S.E.2d 415, 417 (1964), the South Carolina Supreme Court admonished that "it [is] mandatory on the part of ... commissioners to serve until their successors are appointed and qualify." See also 1978 S.C. Op. Att'y Gen. 139 (1978) ("[M]embers who have resigned and have ceased participating in Commission affairs should be informed that they should remain upon the Commission. If they do not accede to this request, legal proceedings may be instituted to seek compliance."). Alternatively, such vacancies may be filled by the Governor as interim appointments during a recess of the Senate. See Senate by & through Leatherman v. McMaster, *supra*.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

Exhibit 12. DDSN Commission Vacancies

South Carolina

Department of Disabilities and Special Needs

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Commission

DDSN is governed by a seven-member Commission appointed by the Governor with the advice and consent of the Senate. A Commission member is appointed from each of the state's seven Congressional districts.

District 1

Vacant

[Leadership](#)**Commission
Members**[Meeting
Schedule](#)[Meeting
Notices](#)

District 2

Ms. Lorri Unumb

863 Corley Mill Road

Lexington, SC 29072

(803) 520-8080

lunumbDDSN@gmail.com

[Meeting
Minutes](#)

[Commission
Policies and
Documents](#)

[Commission
Meeting
Videos](#)

[Live Stream
The Current
Commission
Meeting](#)

District 3

Vacant

District 4

Ms. Robin B. Blackwood

222 East Park Ave

Greenville, SC 29601

864-905-2444

DDSNcommissioner@gmail.com

District 5

Mr. Gary C. Lemel

936 Ashford Way

Fort Mill, SC 29708

(803) 325-7673

glemelddsn@gmail.com

District 6

Vacant

District 7

Vacant

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Exhibit 13. DDSN Minutes

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

MINUTES

January 17, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, January 17, 2019, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman
Gary Lemel – Vice Chairman
Vicki Thompson – Secretary
Sam Broughton, Ph.D.
Chris Neeley
Lorri Unumb

DDSN Administrative Staff

Mrs. Mary Poole, State Director; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Ms. Lisa Weeks, Chief Financial Officer; Mrs. Susan Beck, Associate State Director, Policy; Ms. Tana Vanderbilt, General Counsel; Ms. Sandra Delaney, Administrative Coordinator (For other Administrative Staff see Attachment 1 – Sign In Sheet).

Guests

(See Attachment 1 Sign-In Sheet)

Coastal Regional Center (via videoconference)

(See Attachment 2 Sign-In Sheet)

Pee Dee Regional Center (via videoconference)

(See Attachment 3 Sign-In Sheet)

Whitten Regional Center (via videoconference)

(See Attachment 4 Sign-In Sheet)

Pickens County DSN Board
(See Attachment 5 Sign-In Sheet)

News Release of Meeting

Chairman Ravenel called the meeting to order and Commissioner Thompson read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Neeley, seconded by Commissioner Broughton, the Commission adopted the January 17, 2019 Meeting Agenda. (Attachment A)

Invocation

Commissioner Broughton gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Neeley, seconded by Commissioner Lemel, the Commission approved the minutes of the December 13, 2018 Commission Meeting.

Public Input

The following individual spoke during Public Input: Deborah McPherson.

Commissioners' Update

There were no Commissioners' Update.

Policy Committee Update

Committee Chairman Thompson reported the Committee met on January 14, 2019. She stated the policies that were taken into consideration were previously sent to the full Commission for review. Committee Chairman moved that the Commission accept changes made to Directives 535-14, 535-15, 600-03 and 600-05. The motion was seconded by Commissioner Neeley and passed. Committee Chairman Thompson stated the Policy Committee would like to begin discussions on risk management changes and taking progressive action on providers. Discussion followed in regards to hiring an outside consultant to examine the agency. Commissioner Neeley made the motion that the Legislative Committee form a workgroup with citizen, staff and other Commissioners to solicit proposals from outside consultants to come in and do

a full examination of the agency. The motion was seconded by Commissioner Unumb and passed. (Attachment B)

State Director's Report

Director Poole reported on various topics. (Attachment C):

2018 Silver Palmetto Award

Director Poole presented information on the 2018 Silver Palmetto Award that is given annually to a city or town in South Carolina that has best demonstrated exceptional support and commitment to the people we serve during the previous year. On motion of Commissioner Neeley, seconded by Commissioner Broughton and passed, the Commission approved that the City of Aiken be awarded the 2018 Silver Palmetto Award. The 2018 Silver Palmetto Award will be presented February 4, 2019, during the annual meeting of the Municipal Association of South Carolina.

Legislative Oversight Committees Update

Director Poole provided an update on the Legislative Oversight Committees. Discussion followed. Commissioner Neeley recommended that the updates to the House and Senate Committees include a legislative report card showing the agency's progress. The Legislative Committee will look at the recommendations and bring to the full Commission. (Attachment D)

Provider Contact Increases

Mr. Norman provided information on the 2019 Contract Amendments for Babcock Center, Greenville Thrive Upstate and Georgetown DSN Board. Commission Thompson moved to approve the amendments presented. The motion was seconded by Commissioner Lemel and passed. (Attachment E)

2019-2020 Budget Update

Ms. Weeks provided an update of the 2019-2020 Budget. Discussion followed. (Attachment F)

Financial Update

Ms. Weeks provided an overview of the agency's financial activity and the agency's current financial position. Discussion followed. (Attachment G)

Analysis of Current Waiting Lists

Mrs. Beck provided an analysis of the current waiting lists. Discussion followed. The Commission requested that the report be broken out by ages. (Attachment H)

Executive Session

On motion of Chairman Ravenel, seconded by Commission Neeley, the motion passed to enter into Executive Session to discuss personnel issues.

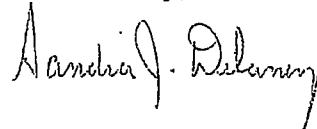
Enter into Public Session

The Commission entered into Public Session. It was noted that no action was taken in the Executive Session.

Next Regular Meeting

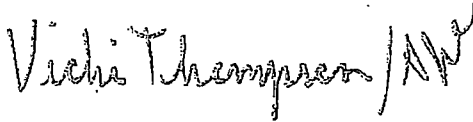
February 21, 2019.

Submitted by,



Sandra J. Delaney

Approved:



Commissioner Vicki Thompson
Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS
MINUTES

February 21, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, February 21, 2019, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman
Gary Lemel – Vice Chairman
Vicki Thompson – Secretary
Sam Broughton, Ph.D.

Absent:

Lorri Unumb

DDSN Administrative Staff

Director Mary Poole; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Ms. Lisa Weeks, Chief Financial Officer; Mrs. Susan Beck, Associate State Director, Policy; Ms. Tana Vanderbilt, General Counsel; Ms. Sandra Delaney, Administrative Coordinator (For other Administrative Staff see Attachment 1 – Sign In Sheet).

Guests

(See Attachment 1, Sign-In Sheet)

Coastal Regional Center (via videoconference)

(See Attachment 2 Sign-In Sheet)

Pee Dee Regional Center (via videoconference)

(See Attachment 3 Sign-In Sheet)

Whitten Regional Center (via videoconference)

(See Attachment 4 Sign-In Sheet)

Pickens County DSN Board

News Release of Meeting

Chairman Ravenel called the meeting to order and Commissioner Thompson read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Broughton, seconded by Commissioner Lemel, the Commission adopted the February 21, 2019 Meeting Agenda. (Attachment A)

Invocation

Commissioner Thompson gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Broughton, seconded by Commissioner Lemel, the Commission approved the minutes of the January 17, 2019 Commission Meeting.

Public Input

The following individual spoke during Public Input: Susan John and Deborah McPherson.

Commissioners' Update

There were no Commissioners' Update.

Policy Committee Update

Committee Chairman Thompson stated the Policy Committee met on February 14, 2019. The meeting information was provided to the full Commission to give them the opportunity to review prior to today's meeting. Committee Chairman stated the Committee recommends the Commission adopt the revised Governance Policy. Discussion followed. Commissioner Broughton moved that the sentence involving the Chairperson removing themselves from debate be eliminated, otherwise adopt the policy leaving the direction as written and presented. The motion was seconded by Commission Thompson and passed.

The revised Regional Center Camera Policy 535-16-DD was discussed. Committee Chairman Thompson made the motion that the policy requiring the

use of surveillance video cameras in DDSN Regional Centers be passed. The motion was seconded by Commissioner Broughton and passed.

Committee Chairman Thompson stated the Committee does not feel it can make a recommendation on using cameras in community settings until they have more information. The list of eight questions need to be answered. It was suggested adding the question under Location of Providers, what percentage of ANE's have taken place where cameras are in place. (Attachment B)

State Director's Report

Director Poole reported on various topics. Discussion followed on the Case Management rate changes that will be implemented July 1, 2019. It was asked that a roadmap be provided at the next month's Commission Meeting to assist providers in the transition of the new rate. (Attachment C)

Legislative Oversight Committees Update

Director Poole gave an update stating nothing has changed from last month except for the approval of the Governance Policy.

Quarterly Quality Management Report

Ms. Ann Dalton provided a Quarterly Management Report. Discussion followed. (Attachment D)

Financial Update

Ms. Weeks provided an overview of the agency's financial activity and the agency's current financial position. (Attachment E)

Provider Contact Increases

Mr. Norman provided information on the 2019 Contract Amendments for Excalibur and Correct Care. Commission Thompson moved to approve the amendments presented. The motion was seconded by Commissioner Broughton and passed. (Attachment F)

Consideration of Bid-Generators for Emergency Shelters

Ms. Cooper presented information on the bid for the generators for emergency shelters located in Spartanburg, Laurens and Newberry Counties. Commissioner Thompson moved to accept the bid from Page Power Systems, Inc. of Gastonia, North Carolina for a total contract award of \$574,307.00 and to award to the second low bidder should low bidder be determined non-responsible. The motion was seconded by Commissioner Lemel and passed. (Attachment G)

Executive Session

On motion of Commissioner Thompson, seconded by Commission Lemel, the motion passed to enter into Executive Session to discuss an employment and contractual matter.

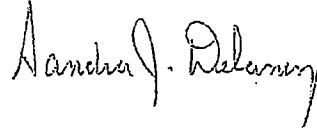
Enter into Public Session

The Commission entered into Public Session. It was noted that no action was taken in the Executive Session.

Next Regular Meeting

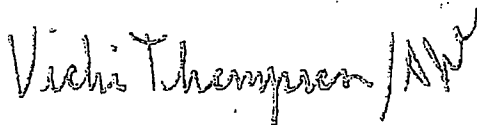
March 21, 2019.

Submitted by,



Sandra J. Delaney

Approved:



Commissioner Vicki Thompson
Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS
MINUTES

March 21, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, March 21, 2019, at 9:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman
Gary Lemel – Vice Chairman
Vicki Thompson – Secretary
Sam Broughton, Ph.D.
Lorri Unumb

DDSN Administrative Staff

Director Mary Poole; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Ms. Lisa Weeks, Chief Financial Officer; Mrs. Susan Beck, Associate State Director, Policy; Mr. Robb McBurney, Ms. Colleen Honey, Administrative Coordinator (For other Administrative Staff see Attachment 1 – Sign In Sheet).

Guests

(See Attachment 1 Sign-In Sheet)

Coastal Regional Center (via videoconference)

(See Attachment 2 Sign-In Sheet)

Pee Dee Regional Center (via videoconference)

(See Attachment 3 Sign-In Sheet)

Whitten Regional Center (via videoconference)

(See Attachment 4 Sign-In Sheet)

Pickens County DSN Board

News Release of Meeting

Chairman Ravenel called the meeting to order and Commissioner Thompson read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Broughton, seconded by Commissioner Unumb, the Commission adopted the March 21, 2019 Meeting Agenda. (Attachment A)

Executive Session

On motion of Commissioner Broughton, seconded by Commissioner Unumb, the motion passed to enter into Executive Session to discuss a contractual matter.

Enter into Public Session

The Commission entered into Public Session. It was noted that no action was taken in the Executive Session.

Invocation

Commissioner Unumb gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Broughton, seconded by Commissioner Lemel, the Commission approved the minutes of the February 21, 2019 Commission Meeting.

Public Input

The following individuals spoke during Public Input: Deborah McPherson, Patricia Harrison, Susan John and Beth Bunge.

Commissioners' Update

Commission Lemel spoke about attending the subcommittee at the State House regarding who can become a Commissioner to no avail as the meeting was adjourned before the issue came up for discussion. He also spoke about a local individual who is participating in the International Special Olympics and how proud everyone was of his achievements.

State Director's Report

Director Poole reported on various topics. (Attachment B)

Brain Injury Awareness Month

Ms. Melissa Ritter, Director of the HASCI Division, gave a presentation.

Legislative Oversight Committees Update

Mr. Robb McBurney gave an update on the various Bills relating to the agency. He also gave an update on the budget. Commission Thompson asked for a monthly update. (Attachment C)

Strategic Plan

Mr. Pat Maley provided a detailed update on the agency's strategic plan. (Attachment D)

Case Management and Early Intervention Update

Director Poole gave a detailed update regarding the timeframe surrounding the CM rate changes and issues surrounding this topic for providers. A discussion followed.

Update on Use of Cameras in Community Settings

Mr. Rufus Britt gave an update on the RFP for installation of cameras in the Regional Centers. Answers to previous questions regarding use in community settings were included in their binders for review. (Attachment E)

Budget and Financial Update

Ms. Weeks provided an overview of the agency's financial activity and the agency's current financial position. It was noted that Mr. McBurney had earlier given the budget update. (Attachment F)

Next Regular Meeting

April 18, 2019.

Submitted by,



Colleen Honey

Approved:

Vicki Thompson / NW

Commissioner Vicki Thompson
Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

A G E N D A

South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension
Conference Room 251
Columbia, South Carolina

March 21, 2019

9:00 A.M.

1. Call to Order *Chairman Eva Ravenel*
2. Welcome - Notice of Meeting Statement *Commissioner Vicki Thompson*
3. Adoption of Agenda
4. ***Executive Session – discuss contractual matter***
5. ***Enter into Public Session – at approximately 10:00 a.m. or later***
6. Invocation *Commissioner Lorri Unumb*
7. Introduction of Guests
8. Approval of the Minutes of the February 21, 2019 Commission Meeting
9. Public Input
10. Commissioners' Update *Commissioners*
11. State Director's Report *Director Mary Poole*
12. Business:
 - A. Brain Injury Awareness Month *Ms. Melissa Ritter*
 - B. Legislative Updates *Director, DDSN HASCI Division*
 - C. Strategic Plan *Mr. Robb McBurney*
 - D. Case Management and Early Intervention Update *Director Mary Poole*
 - E. Update on Use of Cameras in Community Settings *Director Mary Poole*
 - F. Budget Update *Mr. Rufus Britt*
 - G. Financial Update *Ms. Lisa Weeks*
Ms. Lisa Weeks
13. Next Regular Meeting (April 18, 2019)
14. Adjournment

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

MINUTES

April 18, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, April 18, 2019, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman
Gary Lemel - Vice Chairman
Sam Broughton, Ph.D.
Lorri Unumb - Via Skype

Absent:

Vicki Thompson - Secretary

DDSN Administrative Staff

Director Mary Poole; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Mrs. Susan Beck, Associate State Director, Policy; Tana Vanderbilt, General Counsel, Mr. Robb McBurney, Legislative Liaison; Ms. Sandra Delaney, Administrative Coordinator (For other Administrative Staff see Attachment 1 - Sign In Sheet).

Guests

(See Attachment 1 Sign-In Sheet)

Coastal Regional Center (via videoconference)

Pee Dee Regional Center (via videoconference)

(See Attachment 3 Sign-In Sheet)

Whitten Regional Center (via videoconference)

(See Attachment 4 Sign-In Sheet)

News Release of Meeting

Chairman Ravenel called the meeting to order and Commissioner Lemel read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Broughton, seconded by Commissioner Lemel, the Commission adopted the April 18, 2019 Meeting Agenda. (Attachment A)

Invocation

Chairman Ravenel gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Broughton, seconded by Commissioner Lemel, the Commission unanimously approved the minutes of the March 21, 2019 Commission Meeting.

Public Input

The following individuals spoke during Public Input: Susan John, Deborah McPherson, Patricia Harrison, Kathleen Roberts and Beth Bunge.

Commissioners' Update

Commissioner Lemel spoke about attending the subcommittee at the State House regarding a hearing on H 3824-DDSN Commissioner Qualifications and Training adding the subcommittee members were open to his and Director Poole's feedback.

State Director's Report

Director Poole reported on various topics. (Attachment B)

Finance and Audit Committee Update

Committee Chairman Lemel stated the Committee met earlier this month and made minor changes on Directives 275-04 and 275-06. On behalf of the Committee, Committee Chairman Lemel moved that both policies that were presented be adopted by the Commission. The motion was seconded by Commissioner Broughton and passed. (Attachment C)

Disability Advocacy Day

Ms. Connie Gallman, immediate past-chair of the SC Partnership of Disability Organizations, spoke of the events that took place at the 30th Annual Disability Advocacy Day held at the State House on March 6, 2019.

Legislative Update

Mr. McBurney gave an update of the various Legislative topics relating to the agency. (Attachment D)

Budget Update

Mr. Maley provided an update of the agency's budget process. (Attachment E)

Financial Update

Mr. Maley provided an overview of the agency's financial activity and the agency's current financial position. Commissioner Lemel motioned to accept the financial report as presented. The motion was seconded by Commissioner Broughton and passed. (Attachment F)

DDSN Employee of the Year

Mr. Britt welcomed the employees that were nominated for the 2018 DDSN Employee of the Year. Ms. Lemmond introduced each Employee of the Year for each regional center as follows:

Ms. Angel Shuler was announced as the Coastal Regional Center Employee of the Year. Ms. Becky Hill, Facility Administrator, spoke on her behalf.

Ms. Mary Kelly was announced as the Saleeby Regional Center Employee of the Year. Mr. John Hitchman, Facility Administrator, spoke on her behalf.

Ms. Charlene Speaks was announced as the Whitten Center Employee of the Year. Mr. Randy Davis, Facility Administrator, spoke on her behalf.

Ms. Rachel Sholar was announced as the Midlands Regional Center Employee of the Year. Ms. Angela Wright, Facility Administrator, spoke on her behalf.

Ms. Wilma Epps was announced as the Pee Dee Regional Center Employee of the Year. Mr. John Hitchman, Facility Administrator, spoke on her behalf.

Ms. Lemmond announced Ms. Angel Shuler as the DDSN Employee of the Year 2018. Ms. Becky Hill spoke on her behalf.

All recipients received a certificate along with a monetary award.

Executive Session

An Executive Session was not held.

Next Regular Meeting

May 16, 2019.

Submitted by,

Sandra J. Delaney

Sandra Delaney

Approved:

Vicki Thompson / AW

Commissioner Vicki
Thompson Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

A G E N D A

South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension
Conference Room 251
Columbia, South Carolina

April 18, 2019

10:00 A.M.

1. Call to Order *Chairman Eva Ravenel*
2. Welcome - Notice of Meeting Statement *Commissioner Vicki Thompson*
3. Adoption of Agenda
4. Invocation *Commissioner Eva Ravenel*
5. Introduction of Guests
6. Approval of the Minutes of the March 21, 2019 Commission Meeting
7. Public Input
8. Commissioners' Update *Commissioners*
9. State Director's Report *Director Mary Poole*
10. Finance and Audit Committee Update *Committee Chairman Gary Lemel*
11. Business:
 - A. Disability Advocacy Day *Ms. Margie Williamson
Executive Director, The Arc of SC
President, SC Partnership of Disability Organizations*
 - B. Legislative Updates *Mr. Robb McBurney*
 - C. Budget Update *Mr. Pat Maley*
 - D. Financial Update *Mr. Pat Maley*
 - E. DDSN Employee of the Year *Mr. Rufus Britt
Ms. Liz Lemmond*
12. Executive Session *Chairman Eva Ravenel*
13. Next Regular Meeting (May 16, 2019)
14. Adjournment

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS
MINUTES

May 16, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, May 16, 2019, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman (Via Teleconference)

Gary Lemel – Vice Chairman

Vicki Thompson – Secretary

Robin Blackwood

Lorri Unumb

Absent:

Sam Broughton, Ph.D.

DDSN Administrative Staff

Director Mary Poole; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Mrs. Susan Beck, Associate State Director, Policy; Tana Vanderbilt, General Counsel, Mr. Robb McBurney, Legislative Liaison; Ms. Sandra Delaney, Administrative Coordinator (For other Administrative Staff see Attachment 1 – Sign In Sheet).

Guests

(See Attachment 1 Sign-In Sheet)

Coastal Regional Center (via videoconference)

Pee Dee Regional Center (via videoconference)

Whitten Regional Center (via videoconference)

(See Attachment 2 Sign-In Sheet)

Pickens DSN Board

(See Attachment 3 Sign-In Sheet)

News Release of Meeting

Commissioner Lemel called the meeting to order and Commissioner Unumb read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the

Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Unumb, seconded by Commissioner Blackwood, the Commission adopted the May 16, 2019 Meeting Agenda (Attachment A).

Invocation

Commissioner Lemel gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Unumb, seconded by Commissioner Thompson, the Commission unanimously approved the minutes of the March 21, 2019 Commission Meeting.

Public Input

The following individuals spoke during Public Input: Deborah McPherson and Linda Lee.

Commissioners' Update

Commissioner Unumb stated yesterday was her last day at Autism Speaks and has started her new adventure as CEO of the Council of Autism Service Providers (CASP).

Nominating Committee

Commission Lemel stated that Chairman Ravenel had initially appointed Commissioners Thompson, Unumb and Broughton to the Nominating Committee, however, Commissioner Broughton will not be able to serve in that capacity. Chairman Ravenel requested that Commissioner Lemel also serve on the committee. Commissioner Thompson will chair the committee.

Policy Committee Update

Committee Chairman Thompson gave an update on the Executive Limitations Policy and spoke of the recommended changes from the Policy Committee (highlighted areas attached). The Committee recommended two additions to the policy – one differentiating “Policies from Procedures on page 2, and the second requiring the Director to submit relevant information to the Commission regarding changes being considered by SCDHHS on page three. Commissioner Lemel stated the recommended proposals presented be treated

as a motion. Discussion followed on the first recommendation (page two). Commissioner Unumb moved to amend the motion to change the word "and" to "on". Commissioner Thompson seconded the motion and the amendment to the motion. The motion and the amendment passed unanimously. Discussion followed on the second recommendation (page 3). Commissioner Unumb moved to amend the motion to move the last sentence to the beginning of item No. 15 and revise the sentence structure. Commissioner Thompson seconded the motion to the amendment. The motion and the amendment to the motion passed unanimously. Commissioner Lemel requested a motion to further review and create a supplemental policy on subsection 8. Commissioner Unumb motioned that the Policy Committee further review and have a supplementary policy to define the procedures under subsection eight. Commissioner Blackwood seconded the motion. Commissioners Lemel, Ravenel, Unumb, and Blackwood voted aye, Commissioner Thompson abstained. (Attachment B)

Legislative Update

Mr. McBurney gave an update of the various Legislative topics relating to the agency. (Attachment C) In regard to the Adult Health Care Consent Act, Commissioner Thompson requested that staff research with other states as to how they handle the potential conflict of interest that exists when providers have dual relationships of being both a provider and a personal representative.

Budget Update

Mr. McBurney provided an update of the agency's budget process as part of the Legislative Update. He stated the budget was in conference committee to hash out the differences between the House and Senate, however, he said the agency budget looked good and the budget should be finalized by the end of the week.

Financial Update

Mr. Maley announced that the agency hired Mr. Chris Clark as the new Chief Financial Officer and he will begin June 3, 2019. Mr. Maley provided an overview of the agency's financial activity and the agency's current financial position. Commissioner Unumb motioned to accept the financial report as presented. The motion was seconded by Commissioner Blackwood and passed. (Attachment D)

HCBS Settings Rule Update

Ms. Priest gave a PowerPoint presentation update on the implementation of the HCBS Final Rule Settings. Discussion followed. Commissioner Thompson requested that staff narrow down the definition of isolation other than by using a fence and that a link for the State Transition Plan formulated

by DHHS be placed on the DDSN website when it comes open for public comment. (Attachment E)

Early Intervention Update

Mr. Britt gave an update on the transition to fee for service. In July, DDSN wants to implement consistency and pay retrospectively at a rate of \$23.52 for 15-minute units. At this time, only one provider, Pickens DSN Board, wants to terminate this service. They have a good transition plan to position the six children they serve to other agencies without disruption in their services. Commissioner Thompson asked if all providers would currently be breaking even according to projections with prospective payment. Mr. Britt responded no. Commissioner Lemel entertained a motion to approve the July 1 implementation date of the fee-for-service retrospective payment across the board. Commissioner Unumb so moved and the motion was seconded by Commissioner Blackwood. Discussion followed. A vote was taken with Commissioners Lemel, Ravenel, Unumb, and Blackwood voting aye and Commissioner Thompson voting no. The motion passed.

It was noted Chairman Ravenel had to disconnect from the teleconference connection after the vote.

Waiver Case Management Update

Ms. Beck provided a PowerPoint presentation update on waiver case management. Mr. Maley explained the provider billing trend analysis chart and shared the safety net plan to aid providers for three months through the transition to fee-for-service. Discussion followed. Commissioner Lemel entertained a motion to ratify the safety net plan. Commissioner Unumb moved and the motion was seconded by Commissioner Blackwood. A vote was taken with Commissioners Lemel, Unumb, and Blackwood voting aye and Commissioner Thompson voting no. (Attachment F)

Hurricane Preparedness

Mr. Britt gave an update on hurricane preparedness stating the generators the agency operates are in working order. There are sixty-two fixed generators throughout the five campuses and there are mobile generators that can power the cottages, etc. An annual emergency preparedness meeting is scheduled this Wednesday to discuss readiness plans with all providers and facility administrators. Mr. Britt also spoke of the FEMA grant applications for generators for providers. Discussion followed.

It was noted that Commissioner Thompson had to depart the meeting.

Regional Center Cameras

Mr. Britt gave an update on the cameras for the Regional Centers stating video surveillance is going well at the Coastal Center. Codelyn has been requested to visit Saleeby, Midlands and Whitten Center to provide specifications to add video surveillance of residential and day program facilities. A visit is being coordinated to visit the Pee Dee Center. A consensus is being conducted with families for the consumers that reside at the Coastal Center. The plan is to go live June 1 and if it requires staff to visit some of these families to help explain the process, that is what will be done. Discussion followed. (Attachment G)

Analysis of Current Waiting Lists

Ms. Beck stated she had a PowerPoint presentation prepared but given the time constraint, she provided highlights of the report provided in the Commission meeting binders. Ms. Beck also summarized waiver enrollment process improvements being implemented to include changes to DDSN internal processing that will not affect case managers. Additional case management units will be awarded to help expedite enrollment in the waiver; families will be contacted 3 months earlier to begin enrollment that much earlier; and case managers will implement enrollment timelines. Discussion followed. (Attachment H)

Quarterly Quality Management Report

Ms. Dalton provided data for a five-year trend on incident management. (Attachment I)

State Director's Report

Director Poole reported on various topics. (Attachment J)

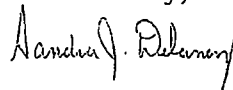
Executive Session

Commissioner Lemel announced that an Executive Session would not be held due to not having a quorum.

Next Regular Meeting

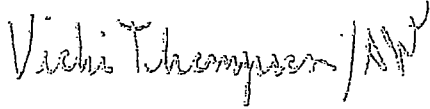
June 20, 2019.

Submitted by,



Sandra Delaney

Approved:

A handwritten signature in cursive script, appearing to read "Vicki Thompson", followed by a vertical line and a stylized monogram or set of initials.

Commissioner Vicki Thompson
Secretary

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

A G E N D A

South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension
Conference Room 251
Columbia, South Carolina

May 16, 2019

10:00 A.M.

1. Call to Order *Commissioner Gary Lemel*
2. Welcome - Notice of Meeting Statement *Commissioner Vicki Thompson*
3. Adoption of Agenda
4. Invocation *Commissioner Gary Lemel*
5. Introduction of Guests
6. Approval of the Minutes of the April 18, 2019 Commission Meeting
7. Public Input
8. Commissioners' Update *Commissioners*
9. Nominating Committee *Commissioner Gary Lemel*
10. Policy Committee Update *Committee Chairman Vicki Thompson*
11. Business:
 - A. Legislative Updates *Mr. Robb McBurney*
 - B. Budget Update *Mr. Pat Maley*
 - C. Financial Update *Mr. Pat Maley*
 - D. HCBS Final Rule Update *Ms. Janet Priest*
 - E. Early Intervention Update *Mr. Rufus Britt*
 - F. Waiver Case Management Update *Mrs. Susan Beck*
 - G. Hurricane Preparedness *Mr. Rufus Britt*
 - H. Regional Center Cameras *Mr. Rufus Britt*
 - I. Analysis of Current Waiting Lists *Mrs. Susan Beck*
 - J. Quarterly Quality Management Report *Ms. Ann Dalton*
12. State Director's Report *Director Mary Poole*
13. Executive Session *Commissioner Gary Lemel*
14. Next Regular Meeting (June 20, 2019)
15. Adjournment

SOUTH CAROLINA COMMISSION ON DISABILITIES AND SPECIAL NEEDS

MINUTES

June 20, 2019

The South Carolina Commission on Disabilities and Special Needs met on Thursday, June 20, 2019, at 10:00 a.m. at the Department of Disabilities and Special Needs Central Office, 3440 Harden Street Extension, Columbia, South Carolina.

The following were in attendance:

COMMISSION

Present:

Eva Ravenel, Chairman
Gary Lemel - Vice Chairman
Vicki Thompson - Secretary
Robin Blackwood
Lorri Unumb

DDSN Administrative Staff

Director Mary Poole; Mr. Pat Maley, Deputy Director; Mr. Rufus Britt, Associate State Director, Operations; Mrs. Susan Beck, Associate State Director, Policy; Mr. Chris Clark, Chief Financial Officer; Ms. Tana Vanderbilt, General Counsel, Mr. Robb McBurney, Legislative Liaison; Ms. Sandra Delaney, Administrative Coordinator (For other Administrative Staff see Attachment 1 - Sign In Sheet).

Guests

(See Attachment 1 Sign-In Sheet)

Coastal Regional Center (via videoconference)

(See Attachment 2 Sign-In Sheet)

Pee Dee Regional Center (via videoconference)

(See Attachment 3 Sign-In Sheet)

Whitten Regional Center (via videoconference)

(See Attachment 4 Sign-In Sheet)

Pickens DSN Board

(See Attachment 5 Sign-In Sheet)

Notice of Meeting Statement

Chairman Ravenel called the meeting to order and Commissioner Thompson read a statement of announcement about the meeting that was distributed to the appropriate media, interested persons, and posted at the

Central Office and on the website in accordance with the Freedom of Information Act.

Adoption of the Agenda

On motion of Commissioner Lemel, seconded by Commissioner Unumb, the Commission adopted the June 20, 2019 Meeting Agenda. (Attachment A)

Invocation

Commissioner Blackwood gave the invocation.

Approval of the Commission Meeting Minutes

On motion of Commissioner Blackwood, seconded by Commissioner Thompson, the Commission approved the minutes of the May 16, 2019 Commission Meeting.

Public Input

The following individuals spoke during Public Input: Dana McConnell, Evelyn Turner, Susan John and Deborah McPherson.

Commissioners' Update

There were no commission updates.

Policy Committee Update

Committee Chairman Thompson gave an update of the Policy Committee meeting that was held June 5, 2019. On behalf of the Policy Committee, Commissioner Thompson motioned that the Commission approve 738-01-DD with changes as presented and the Waiver and Case Management standards as presented. The motion passed. (Attachment B)

Golden Palmetto Award

Mr. McBurney presented DDSN's recommendation for the Golden Palmetto Award for 2018 which is awarded annually to a county government in South Carolina that has best demonstrated exemplary support of citizens with disabilities and special needs during the previous year. Commissioner Unumb made the motion to accept the recommendation to award Fairfield County the 2017 Golden Palmetto Award. The motion was seconded by Commissioner Lemel and passed. The award will be presented during the annual meeting of the SC Association of Counties in Hilton Head on August 5, 2019.

Legislative Update

Mr. McBurney gave an update of the various Legislative topics relating to the agency. (Attachment C)

Budget Update

Mr. Clark gave a brief update on the budget stating the agency will start moving toward a true operating budget in February 2020 and will present to the Commission in May or June. The agency will start with a zero-based budget with the regional centers. He also added a memo was sent to the provider network regarding the two percent cost-of-living adjustment and the final one-dollar increase.

Financial Update

Mr. Clark provided an overview of the agency's financial activity and the agency's current financial position. He stated expenses are below the budgeted expenses per the spending plan, but we have some revenue issues that negatively impact our actual financial results. The Finance Team is working hard to make sure the agency remains in a positive cash position. Chairman Ravenel asked that the revenue information be included in the report. Mr. Clark stated we would look at taking a full income state type of approach and present cash balance information as well. Commissioner Blackwood motioned to accept the financial report as presented. The motion was seconded by Commissioner Lemel and passed. (Attachment D)

Community Provider Contacts

Mr. Clark presented information on the agency budget for FY 2019-2020 community contracts in the amount of \$543,895,841 for Commission approval. Discussion followed. Mr. Clark will research Commissioner Thompson's questions as to (1) why are the number of individuals receiving case management and family support services down from last year, (2) what is the change in the Community Options contract amount, and (3) what is the day service add-on for SC Mentor? Mr. Clark stated future reports would be updated to show comparative consumers served information as well as explanations to help minimize the confusion on some of the changes. Commissioner Thompson made the motion to approve the contracts for FY 2019-2020 as presented. The motion was seconded by Commissioner Unumb and passed. (Attachment E)

Comprehensive Property Improvement Plan (CPIP) Projects

Ms. Hall presented information on the FY 19-20 CPIP projects totaling \$1,370,000.00. She requested approval from the Commission to start the bidding process. Discussion followed. Commissioner Thompson motioned to

approve the CPIP projects as presented. The motion was seconded by Commissioner Lemel and passed. (Attachment F)

Sale of Property

Mr. Maley presented information on Lots 2 and 3 Diane Road, York, SC, requesting Commission approval to sell the property. Discussion followed. Commissioner Blackwood made the motion to sell the property with the Commission approving unanimously. (Attachment G)

Case Management Update

Ms. Beck provided a PowerPoint presentation on case management. Discussion followed. The Commission urged agency staff to negotiate with DHHS on the travel rates. Mr. Clark also provided information on how DHHS developed the rates in 2014 for case management. (Attachment H)

Waiting List Report

Ms. Beck provided information and discussed the waiting list summary in detail. (Attachment I)

Consideration of Bids

Mr. Tharin presented information on the bid for three generators for emergency shelters in Fairfield, Williamsburg and Florence counties with the recommendation to award the contract to DNB Electric of West Columbia in the amount of \$413,237.00. Commissioner Blackwood moved to approve the bid as presented with the permission to award to the second low bidder should the low bidder be determined non-responsible. The motion was seconded by Commissioner Unumb and passed. Mr. Tharin also presented information on the bid for a generator upgrade at the Coastal Center with the recommendation to award the contract to LC's Electric of Chapin, SC in the amount of \$124,960.00. Commissioner Blackwood moved to approve the bid as presented with the permission to award to the second low bidder should the low bidder be determined non-responsible. The motion was seconded by Commissioner Lemel and passed. (Attachment J)

Review of Special Contracts/Grants

Mr. Maley provided information on the special contracts and grants. He stated that staff have looked closely for ones that were non cost-effective. Commissioner Thompson moved to accept the recommended reductions. The motion was seconded by Commissioner Unumb and passed. (Attachment K)

Nominating Committee-Election of Officers

Committee Chairman Thompson presented the following slate of officers for FY 2019-2020 – Commissioner Lemel as Chairman, Commissioner Thompson as Vice Chairman, and Commissioner Unumb as Secretary. Chairman Ravenel moved to close nominations and accept the slate of officers by acclamation. The motion was seconded by Commissioner Lemel and the motion passed.

State Director's Report

Director Poole reported on various topics. (Attachment L)

Executive Session

An Executive Session was not held.

Next Regular Meeting

July 18, 2019.

Submitted by,

Sandra J. Delaney

Sandra Delaney

Approved:

Vicki Thompson / NW

Commissioner Vicki Thompson
Secretary