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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY

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

The Honorable Roger L. Couch

Appellate Case No. 2017-002290

RECEIVED

APR 23 2020

SC Court of Appeals

Deborah B. Harwell Respondent/Appellant

v.

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

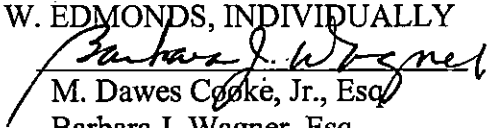
Of whom Robert Bryan Harwell, individually and as the Personal
Representative of the Estate of David W. Harwell is the Respondent/Appellant

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

v.

Law Office of Deirdre W. Edmonds, P.A. and Deirdre W.
Edmonds, individually Appellants/Respondents

PETITION FOR PARTIAL REHEARING AND SUGGESTION OF REHEARING *EN BANC*
OF APPELLANTS/RESPONDENTS LAW OFFICE OF DEIRDRE W. EDMONDS, P.A. AND
DEIRDRE W. EDMONDS, INDIVIDUALLY


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**PETITION FOR PARTIAL REHEARING AND
SUGGESTION OF REHEARING *EN BANC***

AND NOW COME Appellants/Respondents Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds (collectively "Attorney Edmonds"), by and through their undersigned counsel, and file the following Petition for Partial Rehearing and Suggestion for Rehearing *en Banc* only with respect to the Court's affirmance of the imposition of sanctions upon Attorney Edmonds (Section I.A of the Court's Unpublished Opinion No. 2020-UP-103 ("Opinion")). Attorney Edmonds does not seek rehearing of the Court's affirmance of the denial of certain sanctions, as discussed in Section I.B (with the heading "Harwell's Appeal") of the Opinion.

INTRODUCTION

This matter began as an action styled: (*Estate of David W. Harwell*) *Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records*, No. 2015-ES-21-00778 (In the Probate Court of Florence County, South Carolina) ("778 Florence Action").¹ This appeal concerns sanctions imposed on Attorney Edmonds because of a claim she asserted on behalf of Deborah D. Harwell ("Mrs. Harwell") against Robert Bryan Harwell, as Personal Representative of the Estate of David W. Harwell ("Justice Harwell") ("Respondent"), for the payment of approximately \$1,400.00 that Mrs. Harwell spent for the publication of an obituary.

On or about December 3, 2015, Mrs. Harwell, acting *pro se*, filed a Statement of Creditor's Claim for \$1,457.25 for the publication of an obituary of her husband, the late Justice Harwell. (*See R.* p. 108). Respondent denied that claim on behalf of Justice Harwell's Estate. On March 9, 2016, Attorney Edmonds filed a Summons and Petition for Allowance of Creditor's Claim in that amount against Justice Harwell's estate on Mrs. Harwell's behalf, for an "[o]bituary

¹ On June 10, 2016, the trial court removed and transferred the '778 Florence Action to the Circuit Court of Florence County. (*See R.* pp. 7-9). That action is now styled *Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records*, No. 2016-CP-21-01435.

published in newspapers, The Sun News and the State" (the "Obituary Petition"). (*See* R. pp. 147-52). This obituary accurately identified Mrs. Harwell as Justice Harwell's widow, whereas obituaries published by Justice Harwell's estate had outright excluded her.

On April 1, 2016, Respondent as Personal Representative of Justice Harwell's Estate filed Answers and Counterclaims and Third-Party Claims in the '778 Florence County Action. (*See* R. pp. 153-232). Respondent denied the claim for the obituary as an expense of the estate. (*See* R. pp. 155-56 ¶¶ 2, 4). He also moved for sanctions under Rule 11 against Attorney Edmonds. On or about April 12, 2017, the trial court granted in part Respondent's request for sanctions. (*See generally* R. pp. 58-74). While denying most of the sanctions claims, the trial judge found that Attorney Edmonds "was not justified in filing or pursuing the claim for the reimbursement of the obituary publications" and imposed sanctions in the amount of \$5,000.00 because of her filing of the Obituary Petition. (*See* R. pp. 72-73).

Attorney Edmonds appealed from the imposition of sanctions upon her.² On April 8, 2020, this Court filed its Opinion ("Opinion") that, in part, affirmed the imposition of sanctions on Attorney Edmonds with regard to the Obituary Petition. Specifically, this Court found that the trial court did not err in imposing sanctions where: (a) there was no specific finding that the Obituary Petition was frivolous and (b) Respondent had not presented any evidence supporting that the Obituary Petition was frivolous. Additionally, this Court held that the trial court did not abuse its discretion by imposing excessive sanctions. For the reasons that follow, Attorney Edmonds respectfully asserts that this Court's Opinion is in error. This Court should grant rehearing as to its affirmance of the sanctions imposed on Attorney Edmonds and reverse the trial judge's imposition of those sanctions.

² Respondent and Client have also filed appeals that have been consolidated with Attorney Edmonds' Appeal. Those issues are not relevant to this Petition.

ARGUMENT

A. The Court Should Grant This Petition for Partial Rehearing and Reverse the Imposition of Sanctions on Attorney Edmonds

In its Opinion, this Court affirmed the imposition of sanctions upon Attorney Edmonds pursuant to Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Frivolous Proceedings Act"), S.C. Code § 15-36-10.

Rule 11(a) of the South Carolina Rules of Civil Procedure requires every pleading to be signed with the signature constituting a certificate by the signor that he has read the pleading and "that to best of his knowledge, information and belief there is good ground to support it." "[T]he criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [Frivolous Proceedings Act]." *See In re Beard*, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct. App. 2004) (*quoting Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001)). Under the Frivolous Proceedings Act, "[a]n attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for . . . filing a frivolous pleading, motion, or document." *See* S.C. Code § 15-36-10(A)(4)(a).

Though the Opinion is unpublished, the Court's holding runs counter to sound public policy in two important respects. First, it permits imposition of sanctions without any development of the merits of the underlying claim, thus encouraging parties and attorneys to continue to prosecute cases rather than risk creating an inference that the case was frivolous. Parties should be free to reconsider their decisions to pursue litigation, as Mrs. Harwell did here, rather than feel obliged to build a record to stave off sanctions. Second, and more importantly, the holding punishes a lawyer for honoring her attorney's oath by maintaining a suit that she "believe[s] to be honestly debatable under the law of the land." As will be shown below, Mrs. Harwell had at least a colorable claim in the Obituary Petition, which she would lose forever if Attorney Edmonds did not promptly pursue it in Probate Court. A lawyer considering

representation of a client in a difficult and politically unpopular matter should not face a Hobson's choice of shirking her professional duty or facing sanctions if she does not win.

For the reasons that follow, this Court should grant a partial rehearing in this matter because the trial court erred in imposing sanctions on Attorney Edmonds.

1. As a Matter of Law and Fact, the Obituary Petition Was Not Frivolous

The trial judge erred in imposing sanctions because Respondent did not present a scintilla of evidence that the Obituary Petition was, in fact, frivolous or without any merit. In its Opinion, this Court held that "Edmonds's filing of the petition for allowance of the Obituary Claim was equally frivolous as Widow had no reasonable expectation that the estate would reimburse her for the additional, unauthorized obituaries." (*See* Opin., at 8). This Court based that conclusion on the existence of the Mediation Agreement and the fact that Mrs. Harwell published the obituaries at issue on her own initiative (and without the consent or knowledge of the Estate).

This Court erred in concluding that the Obituary Petition was frivolous. To the contrary, that claim was at least facially plausible and was not asserted in bad faith. The Estate published an obituary that acknowledged all of Justice Harwell's relatives (even his dog) but failed even to mention his widow. The inclusion of the surviving spouse is a standard part of an obituary, and its absence from the obituaries that the Estate published arguably defeated the very purpose of publishing an obituary. Mrs. Harwell had every right to ask the Estate to pay the cost of publishing a correct obituary. The Probate Court could have approved or denied the Obituary Petition, but that claim was hardly frivolous. Attorney Edmonds could not, consistent with her professional duties, permit Client's claim to become time-barred simply because she was not sure that the claim would be approved. For the reasons that follow, the imposition of sanctions against Attorney Edmonds was in error, and this Court should reverse and vacate the imposition of sanctions.

a. **Mrs. Harwell Had a Colorable Argument That the Mediation Agreement Did Not Foreclose the Obituary Petition**

Respondent, as the party moving for sanctions, bore the burden of showing that the claims were frivolous. As discussed above, a motion for sanctions is normally made following an adjudication of the merits of the underlying claim. There was no such adjudication here. Instead, in his motion for sanctions Respondent simply alleged that "[i]n the Final Order and Agreement, the Petitioner waived any and all claims or rights against the Estate, and such Order was a final, binding, unappealed order." (*See R.*, at 209). Specifically, Respondent argued (and this Court has held) that the claim asserted in the Obituary Petition was waived in a Mediation Agreement attached to a Final Decree (Ending Action) filed in an action for support and maintenance, in which Attorney Edmonds did not appear or represent Mrs. Harwell. (*See R.* pp. 167-78). In particular, Respondent and this Court's Opinion rely on a provision in the Mediation Agreement stating that "[b]oth parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other." (*See R.* p. 147 ¶ 12). Mrs. Harwell had a good-faith argument that the Mediation Agreement could not have been intended to bar a claim that not only did not exist at the time of the mediation but would not arise out of conduct by her husband. The Mediation Agreement provided that: "The parties have settled all of the issues *arising out of their marriage and of the Prenuptial Agreement* by this Mediation Agreement and request the Family Court to approve and incorporate this Mediation Agreement into an order of the Court." (*See R.* p. 145 ¶ 2 (emphasis added)). The Obituary Petition did not arise out of Mrs. Harwell's marriage to Justice Harwell or her prenuptial agreement. The claim did not even exist at the time the parties entered into the Mediation Agreement and could not have been within the contemplation of the parties. It is not a claim that Mrs. Harwell was entitled to a portion of Justice Harwell's Estate. Instead, this was a simple claim to be compensated for incurring an expense that the Estate should have paid to ensure that an accurate obituary was published. It was far from a foregone conclusion that the Mediation Agreement would be interpreted to bar this claim.

b. Mrs. Harwell Intended to Challenge the Validity of the Mediation Agreement and the Separation Decree in Family Court

In her affidavit, Attorney Edmonds averred that she filed the Obituary Petition to protect Mrs. Harwell's right to assert that claim from being forever lost by the passage of time. (*See R. pp. 298-99 ¶¶ 19-21*). This Court correctly observed — in affirming the denial of sanctions concerning Mrs. Harwell's petition pursuant to a prenuptial agreement ("Prenuptial Petition") — that Mrs. Harwell "informed Edmonds that she believed Decedent withheld information regarding the extent of his assets when they entered the Mediation Agreement and she intended to challenge the Separation Decree." (*See Opin.*, at 11). This Court also noted that Attorney Edmonds said that the challenge to the Mediation Agreement would have to take place in Family Court; she advised Mrs. Harwell to obtain other counsel for that pursuit, as she did not have expertise in that court. (*See id.*). The Opinion continues: "[b]ased upon her experience and knowledge as a long term probate practitioner and former probate judge, Edmonds determined Widow would need to file a petition for allowance of the Prenuptial Claim so that if Widow succeeded in the family court, she would not be foreclosed from making resulting claims against the estate in probate court." (*See id.*).

This Court correctly affirmed that the filing of the Prenuptial Petition was not sanctionable: The very same rationale compels the denial of sanctions for the Obituary Petition as well.

Attorney Edmonds' detailed affidavit attests that she asserted claims for her Client because Mrs. Harwell intended to challenge the Mediation Agreement in Family Court. In the event that undertaking succeeded (taking away the asserted basis for imposing sanctions on Attorney Edmonds), Mrs. Harwell would ultimately need to pursue the Obituary Petition in Probate Court. Unless Attorney Edmonds immediately preserved Mrs. Harwell's rights, it would be forever lost:

5. During my initial conferences with Mrs. Harwell, she advised me that she had received a great deal of information after the Order and Agreement that lead her to believe that Mr. Harwell had not fully disclosed his assets to her during

their mediation conference and she testified to this information at the Family Court hearing. [Citations omitted.]

6. When I was retained by Mrs. Harwell she provided me with this information and we discussed how she might proceed with the matter. Although I initially believed that Mrs. Harwell might be able to proceed in the Probate Court with regard to her claims of fraud and misrepresentation with regard to the Mediated Agreement. I later determined that she would need to seek to set aside the Family Court order and I advised her that she should retain a family court attorney for purposes of same. I am aware that Mrs. Harwell sought legal representation from numerous family court attorneys throughout this state before eventually filing, pro se, her Rule 60(b) Motion in the Family Court to set aside the Order based upon fraud and misrepresentation.

7. Deborah Harwell initially filed her creditor claims pro se in the Probate Court before I was retained. Subsequently, I filed the Petitions for Allowance of Claims to preserve any right that Mrs. Harwell might have with regards to such creditor claims. If Mrs. Harwell had failed to timely file her Petitions for Allowance of Claims after being notified by the Personal Representative of the Estate that her creditor claims were being disallowed, her creditor claims would have been barred by statute regardless of whether she was successful in setting aside the Family Court Order and Mediated Settlement in her Rule 60(b) Motion.

8. Based upon the information Mrs. Harwell received regarding David W. Harwell's assets following the Court Order and Mediated Agreement as she testified to at the Family Court hearing, Mrs. Harwell believed that there had been fraud and/or misrepresentations and a failure to disclose assets. Hrg. Transcr. 61: 18-69:25 (June 16, 2016), Exhibit A. If Mrs. Harwell had failed to file her creditor claims within the statutory filing deadline for the filing of creditor claims after a decedent's death, she would have been precluded from recovering on her claims.

(See R. pp. 413-14 ¶¶ 5-8). Mrs. Harwell expressed to Attorney Edmonds a firm belief that Justice Harwell failed to disclose assets and that she intended to set the settlement aside. Having learned this, Attorney Edmonds filed the Prenuptial and Obituary Petitions because she "could not, consistent with my professional responsibility, allow [Mrs. Harwell's] claim against the estate to become time-barred when there was no way for me to determine whether she might be entitled to recovery." (See R. p. 414 ¶ 8).

If Attorney Edmonds had not filed the Obituary Petition, Mrs. Harwell's claim relating to the obituary would have been forever barred *even if she had succeeded on setting aside the mediated settlement* in Family Court. See S.C. Code § 62-3-806(a) ("Every claim which is

disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences a proceeding for allowance of the claim in accordance with Section 62-3-804(2) not later than thirty days after the mailing or other service of the notice of disallowance or partial disallowance by the personal representative."). It was not a foregone conclusion that the Mediation Agreement was valid and would bar Mrs. Harwell's claims against Justice Harwell's Estate. Only time and litigation in Family Court – where Attorney Edmonds did not regularly practice – could determine the validity of the Mediation Agreement. Attorney Edmonds would have breached her duty to her client if she summarily determined that the Mediation Agreement barred the Obituary Petition and failed to preserve that claim in the Probate Court.

Although the amount of money involved in this appeal is relatively small, the implications to the legal profession are enormous. Mrs. Harwell had incredible difficulty finding an attorney to represent her in these matters. The Harwell name is rightly revered in South Carolina legal circles. No attorney would want to challenge the estate of Justice Harwell. Nevertheless, Mrs. Harwell had a claim and needed legal representation. Mrs. Harwell's stepchildren had intentionally omitted her from her husband's obituary, which had included every other family member and even Justice Harwell's dog. This understandably caused Mrs. Harwell great harm, and she wished to enforce her legal rights and be compensated for righting this wrong. At the time that Ms. Harwell's Obituary Petition had to be filed, Attorney Edmonds had no way of knowing that the claim could not succeed.

The Rules of Professional Conduct and the Lawyer's Oath encourage lawyers to take on unpopular causes and to protect the helpless and oppressed. Attorney Edmonds should not be punished for her part in helping Mrs. Harwell preserve whatever claims she might have had against her husband's estate.³ This Court should be loath to uphold the imposition of sanctions

³ "Section 15-36-20 creates a presumption that a person taking part in the initiation or continuation of proceedings acted with a proper purpose 'if he reasonably believes in the existence of facts upon which his claim is based' and . . . reasonably believes under the facts that

against Attorney Edmonds even if all of the claims she asserted proved to be unmeritorious. The Obituary Petition was never found to be unmeritorious, let alone frivolous. Allowing the sanctions imposed on Attorney Edmonds to stand will threaten to chill attorneys from taking on potentially unpopular causes and may deprive those most in need of legal representation from obtaining it.

2. There Has Never Been a Determination That The Obituary Petition Was Actually Frivolous

It is undisputed that the trial court did not make any finding that Mrs. Harwell's Obituary Petition was frivolous. It never dismissed those claims on the merits or for any procedural deficiency. The trial judge did not find that the Obituary Petition was so baseless as to warrant the exceptional remedy of sanctions on Attorney Edmonds. This Court held in its Opinion that the trial judge did not err in imposing sanctions despite its failure to do so:

Although subsection 15-36-10(C)(1) delineates at what procedural stage a court will determine if a claim or defense is considered frivolous upon a motion of the prevailing party, we find this subsection does not prescribe a court's sole method for imposing sanctions for filing or advancing frivolous claims. Subsection (B)(2) provides a court may "upon its own motion or motion of a party" impose sanctions upon an attorney or pro se litigant for violations of subsection (A)(4). Furthermore, the circuit court additionally found sanctions were warranted pursuant to Rule 11, which contains no such procedural prerequisites. *See* Rule 11(a), SCRCP ("If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction . . .").

(*See* Opin., at 8). For the reasons that follow, this Court should grant Attorney Edmonds a rehearing, reconsider its holding on this issue, and reverse the trial judge's sanctioning of Attorney Edmonds.

The Frivolous Proceedings Act — which is one of the bases for the trial courts' sanctions award — "provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being assessed for payment of all or a portion

his claim may be valid under existing or developing law." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997) (*quoting* S.C. Code Ann. § 15-36-20(1)).

of the attorney fees and court costs of the other party if . . . the proceedings have terminated in favor of the person seeking an assessment of the fees and costs.” *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50-51 (2008). The Frivolous Proceedings Act further provides that “[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.” See S.C. Code § 15-36-10(C)(1) (emphasis added). “Motions made pursuant to the [Frivolous Proceedings Act] are *post-trial* motions.” *Holmes v. East Cooper Comm. Hosp., Inc.*, 408 S.C. 138, 160, 758 S.E.2d 483, 495 (2014) (emphasis added).

A party seeking sanctions under Rule 11 must prove an attorney signed a pleading or motion “to cause delay or when no good grounds exist to support the filing.” See *Ex parte Bon Secours–St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011). “A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed.” *Ex parte Gregory*, 378 S.C. 430, 438, 663 S.E.2d 46, 50 (2008).

The trial judge never made any findings as to the merits (or claimed lack thereof) of the Obituary Petition. He never considered or analyzed the substance of the competing obituaries. He never examined whether paying for an accurate obituary to correct a prior misleading obituary could be charged against Respondent or Justice Harwell's Estate. The trial judge did not permit an evidentiary hearing or discovery on the issue. He never determined that the denial of the Estate Claim was appropriate under South Carolina law. Such a judicial determination that the Obituary Petition actually lacked merit was an absolutely necessary condition precedent to the imposition of sanctions under Rule 11 or the Frivolous Proceedings Act. Instead, the trial court (and this Court) relied upon Mrs. Harwell's voluntary dismissal of the Obituary Petition as the basis for sanctions. In doing so, the trial court did *not* explain *why* it felt the Obituary Petition was improper and did not provide Mrs. Harwell an opportunity to withdraw the Obituary

Petition. As a result, its imposition of sanctions on Attorney Edmonds was plainly premature. Therefore, this Court should reverse the imposition of sanctions in this case.

In its Opinion, this Court states that a finding that the Obituary Petition was frivolous was not a prerequisite to the trial court's award of sanctions, relying on Section 15-35-10(B)(2) of the Frivolous Proceedings Act, which states that a court may impose sanctions where "a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4)." This Court suggests that this subsection is an alternative basis under the Frivolous Proceedings Act from Subsection (C)(1) (permitting sanctions *after* an unfavorable ruling on the claim at issue). Respectfully, subsection (B)(2) does not permit the imposition of sanctions without a dismissal and finding of frivolousness. Neither Respondent nor this Court has cited any authority permitting sanctions to be imposed where the underlying claim was never resolved by the court against the sanctioned party. Here, the Obituary Petition was voluntarily withdrawn; Respondent has cited no authority permitting sanctions under such circumstances.

B. Even if Attorney Edmonds' Conduct Was Sanctionable, This Court Should Have Concluded That the Trial Court Imposed Sanctions That Were Excessive and Disproportionate to the Actual Expense Incurred or Amount at Stake

The trial judge sanctioned Attorney Edmonds and awarded Respondent \$5,000.00 in legal fees related to the \$1,457.25 Obituary Petition. This Court affirmed the amount of sanctions, stating:

Although Edmonds contends the sanction is disproportionate to the amount of the claim and is therefore excessive, we find nothing in Rule 11 or the [Frivolous Proceedings] Act confines the court to such a measure; rather, the court has wide discretion to fashion a sanction it deems appropriate given the underlying circumstances. In its order denying the parties' motions for reconsideration, the circuit court explained it arrived at \$5,000 by calculating twenty hours of legal work at a rate of \$250 per hour. Considering the length of the litigation and number of motions filed, we find the circuit court did not abuse its discretion in determining the amount of the sanction.

(See Opin., at 9). For the reasons that follow, this Court should have reversed the trial judge's amount of sanctions as being excessive and disproportionate.

First and foremost, contrary to this Court's holding, the record does not include any evidence that Respondent incurred *any* attorneys fees attributable to the Obituary Petition. The United States Supreme Court has held a sanctions award is only compensatory where it compensates the moving party for fees that would not have been incurred but for the sanctioned conduct:

[A]s we have previously noted, a sanction counts is compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based. . . . A fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned. . . . That kind of causal connection, as this Court explained in another attorney's fees case, is appropriately framed as a but-for test: The complaining party (here, the Haegers) may recover 'only the portion of his fees that he would not have paid but for' the misconduct. *Fox v. Vice*, 563 U. S. 826, 836 (2011); see *Paroline v. United States*, 572 U. S. ___, ___, 134 S.Ct. 1710, 1722, 188 L.Ed.2d 714 (2014).

Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178, 1186 (2017). The record is devoid of evidence of legal expenses Respondent could or would have avoided but for Attorney Edmonds' filing of the Obituary Petition.

Substantially all of Respondent's counsel's efforts, as evidenced by their Motions, Memoranda, Affidavit and live testimony, were spent arguing against the merits of a \$3.1 million creditor claim (for which sanctions were not imposed) and the amendment of the death certificate (the defense of which was itself spurious, inasmuch as Mrs. Harwell was unarguably Justice Harwell's surviving spouse). (See R. pp. 153-207, 237-40, 339-52, 364-83, 384-441, 511-619, 855-74). Respondent did not present any billing records or other evidence showing the hourly rate, the number of hours worked or what work was performed because of the Obituary Petition. There is certainly no evidence supporting that any attorney performed 20 hours of legal work in responding to the relatively small claim in the Obituary Petition. Indeed, it appears that Respondent and his counsel did nothing more to defend that claim than to deny it and include it in the motion to dismiss and for sanctions (in a motion that was also directed to another much larger claim). Mrs. Harwell voluntarily dismissed the Obituary Petition without any action by the Probate Court and without the need for Respondent to incur any legal fees in litigation. To the

contrary, the trial judge himself created the figure of \$5,000, without any evidentiary support whatsoever.

Second, neither the trial court nor this Court engaged in a sufficient detailed evidentiary analysis to determine whether the attorneys' fees awarded in the sanctions were reasonable. In determining the reasonableness of legal fees, South Carolina courts typically focus on six factors from the case of *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997): (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. The factors for determining the reasonableness of fees set forth in Rule 1.5 of the Rules of Professional Conduct, Rule 407, SCACR, include the same factors as those in *Jackson*. Neither the trial judge nor this Court analyzed any of these factors, which would not have supported a \$5,000 sanction award. To the contrary, there is no evidence in the record of the merits of the claim in the Obituary Petition, the time devoted to defending that petition, the work actually performed defending it, or any other factor.

Further, even if supported by any evidence, the amount of \$5,000 allegedly spent to defend a claim of less than \$1,500 is facially excessive and grossly disproportionate. The Petitioner would have to have been uncommonly vindictive and contumacious to spend \$5,000 to defend a claim that small and that innocuous. It was an abuse of discretion for the trial judge to impose sanctions against Attorney Edmonds that are more than three times the amount of the underlying claim.

Therefore, even if sanctions were appropriate in this case, the trial judge erred in imposing such sanctions in the excessive amount of \$5,000.00.

C. Attorney Edmonds Suggests That This Case Would Be Appropriate for Rehearing en Banc

South Carolina Rule of Appellate Procedure 219(a) provides that a rehearing *en banc* may be appropriate where "(1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of

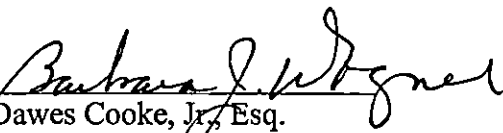
exceptional importance." As discussed above, the issues in Attorney Edmonds' appeal implicate matters of exceptional importance to the South Carolina legal profession and to those who seek legal representation. The Court has affirmed the award of sanctions under circumstances that threaten to discourage attorneys from taking on unpopular causes or difficult cases out of fear of sanctions. If that occurs, the people who will suffer are those most in need of competent legal representation. It is appropriate for the Court of Appeals *en banc* to consider these difficult and important legal questions.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for Partial Rehearing and Suggestion for Rehearing *en Banc* of Appellants/Respondents Law Office of Deirdre W. Edmonds, P.A. and Deirdre W. Edmonds, individually, and should reverse the trial judge's imposition of sanctions of \$5,000 upon Attorney Edmonds.

April 22, 2020

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Office of Deirdre W. Edmonds, P.A. and
Deirdre W. Edmonds, individually***

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 23 2020

SC Court of Appeals

APPEAL FROM FLORENCE COUNTY

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

The Honorable Roger L. Couch

Appellate Case No. 2017-002290

Deborah B. Harwell Respondent/Appellant

v.

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

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

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

v.

Law Office of Deirdre W. Edmonds, P.A. and Deirdre W.
Edmonds, individually Appellants/Respondents

PROOF OF SERVICE

I certify that I have served the Appellants/Respondents' Petition for Partial Rehearing and Suggestion of Rehearing *en Banc* on the above-referenced parties by depositing a copy of it in the United States Mail, postage prepaid, on April 22, 2020, addressed to the following attorneys of record:

Kevin M. Barth, Esq.
Ballenger, Barth, Hoefer and Lewis, L.L.P.
P.O. Box 107
Florence, SC 29503
***Attorney for Respondent/Appellant Robert Bryan
Harwell, individually and as the Personal
Representative of the Estate of David W. Harwell***

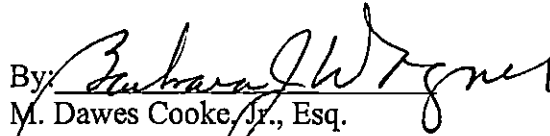
Gena Phillips Ervin, Esq.
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Respondent/Appellant

John Harleston
S.C. Department of Health and Environmental Control
2600 Bull Street
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**BARNWELL
WHALEY**

PATTERSON & HELMS LLC

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REPLY TO SOUTH CAROLINA OFFICE

VIA ELECTRONIC MAIL and U.S. FEDERAL EXPRESS DELIVERY

RECEIVED

April 22, 2020

APR 23 2020

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourt.org

RE: Deborah B. Harwell v. Robert Bryan Harwell, individually and as Personal Representative of the Estate of David W. Harwell, and South Carolina Department of Health and Environmental Control Division of Vital Records, and Law Office of Deirdre W. Edmonds, PA; and Deirdre W. Edmonds, individually
Case Nos.: 2016-ES-07-00302, 2016-CP-21-01435, and 2015-ES-21-00778

Dear Ms. Kitchings:

Enclosed for filing please find the following regarding the above-referenced matter:

1. The original and six (6) copies of the Petition for Rehearing;
2. My firm's check in the sum of \$50.00 for the filing fee; and
3. The original and six (6) copies of the Certificate of Service.

We would appreciate if you would file the originals and return the filed, stamped copy to us in the envelope provided for your convenience.

Sincerely,



M. Dawes Cooke, Jr.
Barbara J. Wagner

MDCjr/BJW/cl
Enclosures (as stated)
cc (w/enclosures):

VIA U.S. MAIL

Kevin M. Barth, Esq.
Genia Phillips Ervin, Esq.
Blake A. Hewitt, Esq.
Deborah B Harwell, *pro se*
John Harleston

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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

