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SC Court of Appeals

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

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

REPLY IN SUPPORT OF 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

M. Dawes Cooke, Jr., Esq.
Barbara J. Wagner, Esq.
Barnwell, Whaley, Patterson & Helms, LLC
288 Meeting Street, Suite 200 (29401)
Post Office Drawer H
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708
mdc@barnwell-whaley.com
bwagner@barnwell-whaley.com
Attorneys for Appellants/Respondents

**REPLY IN SUPPORT OF 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 Reply in Support of Petition for Partial Rehearing and Suggestion for Rehearing *en Banc*:

INTRODUCTION

Attorney Edmonds incorporates by reference, as if set forth at length herein, her Petition for Partial Rehearing and Suggestion of Rehearing *en banc* ("Petition") previously filed with the Court in this matter. On or about May 14, 2020, Respondent filed his Return to Petition for Rehearing and Suggestion of Rehearing *en banc* ("Return"). Attorney Edmonds submits this timely¹ Reply to address certain arguments in Respondent's Return.² For the reasons set forth herein (in addition to those set forth in the original Petition), this Court should grant rehearing *en banc* and reconsider the portion of the Opinion upholding the imposition of sanctions on Attorney Edmonds with regard to the Obituary Claim.

¹ Respondent served his Return on May 14, 2020. Under South Carolina Rule of Appellate Procedure 240(f), Attorney Edmonds had five (5) days to reply to the Return. However, the Supreme Court's Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (as Amended May 29, 2020) provides that "due dates for all Appellate Court filings due during the period of March 20, 2020, thru June 8, 2020, are automatically extended for twenty (20) days." As a result, this Reply is due on June 8, 2020 (May 14 +5 days +20 days).

² Attorney Edmonds also notes that the Return contains numerous factual inaccuracies. For example, Respondent posits that Attorney Edmonds "actively represented" Client at the time she filed *pro se* claims under the prenuptial agreement. (*See* Return, at 3). However, there is no record evidence supporting this contention, as she did not actually represent Client at that time.

Respondent also states that Client stipulated to the voluntary dismissal of all petitions against the Estate. This is incomplete and misleading, insofar as all parties stipulated to the dismissal of various claims (aside from the death certificate and sanctions actions). (*See* R., at pp. 329-33). Client did not dismiss the death certificate claim because DHEC amended the death certificate on its own when it recognized that Client was the surviving spouse.

ARGUMENT

A. Contrary to Respondent's Arguments, the Trial Court Did Not, in Fact, Make a Determination on the Merits of the Obituary Claim.

In his Return, Respondent argues that the trial court *did* conclude that the Obituary Claim was frivolous, so as to support the imposition of sanctions. (*See* Return, at 5-6). Specifically, Respondent argues that "[t]he Circuit Court specifically found in its initial order filed April 12, 2017 that, 'The Creditors (sic) Claims filed Pro Se by her were filed without Merit and frivolous.'" (*See id.*, at 6 (*quoting* R., at p.40)). He further notes that, in denying the motion for reconsideration, the trial judge stated:

"[It] was my intention to include the actions filed by Ms. Harwell for an Elective Share and an Action for Reimbursement for the Obituary claims written by her as part of the actions for which there was no justification. Ms. Harwell had waived any claims against the Estate in the Family Court Order that she agreed to. Until and unless that order is vacated it is the order that binds her. The Family Court further concluded "When she ran the obituary she was in no position to bind the estate or to contract on its behalf."

(*See id.* (*quoting* R., at p. 47)). However, Respondent's argument misses the mark. He has not identified any order in which the trial court explained why Attorney Edmonds acted frivolously or without a basis, so as to justify the imposition of sanctions. To the contrary, the quoted language all involves discussions about Client's liability or claims other than the Obituary Claim.

In his original order imposing sanctions, the trial judge only said the following with regard to Attorney Edmonds' involvement with the Obituary Claim: "I find that Edmonds (sic) was not justified in filing or pursuing the claim for the reimbursement of the obituary publication." (*See* R., at p. 42). The judge did not reference any evidence of record in support of this conclusion. He did not cite to any law expressly forbidding the Obituary Claim. Instead, he made a conclusory statement, without the benefit of discovery and a full evidentiary hearing, that Attorney Edmonds' conduct was "not justified." This is not a sufficient explanation of the grounds for sanctions and did not place Attorney Edmonds on notice of the reasons for the trial judge's award of sanctions.

In the order denying reconsideration of sanctions, the trial judge stated the following about Attorney Edmonds' sanctions regarding the Obituary Claim:

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

(See R., at p.48). However, the trial judge again did not specifically explain what Attorney Edmonds did that supported sanctions on her. He did not conduct any analysis to explain *why* Attorney Edmonds' conduct was frivolous. Even if the trial judge felt that the Obituary Claim should not succeed, he did not analyze whether there was a colorable basis for that claim. Rather, the trial judge seemed to equate his determination that Client should not succeed on the Obituary Claim with a determination that such claim was frivolously asserted. However, he did not conduct a detailed evidentiary analysis, aside from referencing the mediation agreement, to support that conclusion.

As Attorney Edmonds has previously argued, "[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 did so here. As a result, this Court should grant Attorney Edmonds' Petition and reverse the trial judge's imposition of sanctions for her filing of the Obituary Claim.

B. Contrary to Respondent's Arguments, this Court's Opinion is in Error Because Attorney Edmonds Had, at the Very Least, a Colorable Legal Basis for Asserting the Obituary Claim.

The Court should reconsider its Opinion, because it is apparent that, if the trial judge had undertaken a complete analysis, he would have concluded that Attorney Edmonds had colorable

grounds for asserting the Obituary Claim. The Obituary Claim was not facially frivolous. The trial court was never able to recognize that because it did not analyze the legal and factual issues implicated by that claim.

The Court should grant Attorney Edmonds' Petition for Rehearing because she had a proper basis for alleging the Obituary Claim (even if the trial court found that it was not recoverable). Under South Carolina law, claims against a decedent's estate may be asserted:

After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article [Sections 62-3-101 et seq.]. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in Section 62-3-1004 or from a former personal representative individually liable as provided in Section 62-3-1005.

See S.C. Code § 62-3-104. Respondent does not contend that Attorney Edmonds failed to follow the proper procedure for the assertion of a claim. Rather, he claims that there was no substantive legal or factual basis for the Obituary Claim.

However, Respondent cites no law prohibiting the Probate Court from approving the Obituary Claim. Even if there was no express contract authorizing Client to correct the original, inaccurate obituary, her claim for reimbursement was certainly supportable under equitable principles of *quantum meruit* and restitution. It is undisputed that the obituary that the Client published was complete and accurate. On the other hand, it is also undisputed that the obituary Respondent published was grossly inaccurate in that it callously and pointedly omitted any reference to Client, the surviving spouse (just as the death certificate had done). It was plausible that a court could conclude that Client did a service to her late husband's Estate — and honored his wishes — by publishing an accurate and complete obituary.

"To prevail on a *quantum meruit* claim, a plaintiff must establish (1) She conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012) (citing *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117,

119 (Ct. App. 2002); accord *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the same requirements)). As this Court has noted:

“Restitution is a remedy designed to prevent unjust enrichment.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); see also *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988) (“Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.”). “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts.” *Ellis*, 294 S.C. at 473, 366 S.E.2d at 14. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) (internal quotation marks and citations omitted).

“Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has been benefitted at the expense of the plaintiff in order to preclude unjust enrichment.” *Costa & Sons Constr. Co. v. Long*, 306 S.C. 465, 468 n. 1, 412 S.E.2d 450, 452 n. 1 (Ct. App. 1991). “Absent an express contract, recovery under quantum meruit is based on quasi-contract.” *Earthscapes Unlimited, Inc.*, 390 S.C. at 616, 703 S.E.2d at 225. “This Court has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment.” *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 466, 684 S.E.2d 756, 764 (2009) (internal quotation marks and citations omitted).

See *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488–89 (Ct. App. 2011).

At the very least, Attorney Edmonds had a colorable basis for asserting Client's Obituary Claim. Husband's original obituary identified Husband's survivors as his children, his grandchildren, his sister, his sisters-in-law, and numerous nieces and nephews. It even lovingly acknowledged by name Husband's black Labrador retriever dog. However, it completely omitted any mention whatsoever of Client, who was indisputably Husband's surviving spouse. As the Court is well aware, practically all proper obituaries recognize the surviving spouse of a decedent. Client and Attorney Edmonds were justified in believing and asserting that the original Obituary did not benefit the Estate or carry out Husband's wishes, but rather was

intended only to punish and humiliate Client. Respondent has not presented any excuse for his cruel omission of Client from the original obituary.

It is not at all unreasonable to imagine that, had Client pursued the Obituary Claim to its conclusion, the Probate Court would have approved some or all of it as benefitting the Estate by providing for part of Client's husband's funeral expenses, entitling Client to restitution. In fact, such a result is consistent with the law, which has long allowed reimbursement from an estate for funeral and related expenses under quasi contract. See *In re Johnson's Estate*, 198 S.C. 526, 18 S.E.2d 450 (1942) ("We thus conclude that the estate of the wife is primarily liable for her proper funeral expenses and there is no question here as to the amount or the nature of them, so we think and hold that the husband is entitled to reimbursement as claimed by him."); *Watts v. Register*, 76 S.C. 132, 56 S.E. 849 (1907) ("It is too clear for discussion, that one who provides the reasonable funeral expenses of a deceased person is entitled to recover them back from his estate as money justly due on a *quasi* contract, which the law implies and imputes to the personal representative, on the ground that the administrator or executor is bound under the law to provide a decent funeral from the assets of the estate."). Potentially recoverable funeral expenses include costs for purchase of a plot, casket, memorial services, obituary costs, and numerous other expenses. The obituary benefitted the Estate by providing accurate and complete information. Unfortunately, the trial court never provided Client and Attorney Edmonds a full and fair opportunity to present legal and factual support for the Obituary Claim against the Estate.

Respondent has previously suggested that — even though no court has ever adjudicated the merits of the Obituary Claim — the withdrawal of that claim is an indication that it lacked merit. This is utter speculation, lacking any evidentiary support. Client made the decision to withdraw the obituary claim, as she withdrew all of her claims against Husband's estate. There is nothing supporting that the withdrawal of the obituary claim was an indicator, in any way, of the weakness or lack of merit of that claim. Indeed, no discovery was conducted regarding the merits of the obituary claim and there was no trial or even a hearing on that claim: no adjudication whatsoever. In other words, no judge has ever considered and decided the question

of whether that claim actually lacks merit. The only analysis of this issue in Judge Couch's 15-page Order is the unsupported statement — not even directed at Attorney Edmonds — that "I find no basis for Mrs. Harwell's claim for reimbursement for the obituary which she caused to be published." (*See R. p. 40*). Notably, the trial court never undertook any consideration or analysis of the merits of the Obituary Claim.

C. Contrary to Respondent's Arguments, the Mediation Agreement Did Not Foreclose the Obituary Claim.

In his Return, Respondent argues that the Court should deny Attorney Edmonds' Petition because Client's "Mediation Agreement" with her husband — which predated the Obituary Claim by years — foreclosed that claim:

Edmonds alleges that this Court's holding punishes her for advancing Widow's Obituary claim which she "believes to be honestly debatable under the Law of the Land." (Petition p.2) She states "Ms. Harwell had every right to ask the Estate to pay the cost of publishing a correct obituary." (Petition p.4) That is absolutely not correct based upon the record. The Final Decree (Ending Action) filed July 21, 2015 approved the Mediation Agreement executed by the parties which provided in pertinent part, "Both parties waive any and all rights they may have in the estate of the other or to make any claim upon or against the estate of the other. Each party's estate shall be bound by the terms of this agreement." (R. 177) Considering the straightforward language set forth in the Mediated Agreement executed on July 17, 2015 and approved by the Family Court in its Final Decree (Ending Action) filed July 21, 2015 (R. P. 167-178), there can be no legitimate debate about the propriety of the Obituary claim. Edmonds should not have advanced that claim in view of the valid order which prohibited the same. Edmonds simply did not have a Rule 11 good ground or nonfrivolous basis under the Act.

(*See Return, at 8*). The Court and Respondent misapprehend and misconstrue the Mediation Agreement to constitute a waiver or release of claims that the parties plainly did not contemplate.

The Mediation Agreement predates the trial judge's imposition of sanctions by more than two years. There is no evidence — and the parties have not been given the opportunity to explore — that the Obituary Claim existed at the time of the Mediation Agreement or was within the parties' contemplation. The Mediation Agreement was intended to resolve "all of the issues arising out of their marriage and of the Prenuptial Agreement." (*See R., at p.145 ¶ 2*). The

Mediation Agreement then provided for alimony and the disposition of marital assets, including real property, vehicles and personal effects. (*See id.*, at pp.145-46 ¶¶ 3-8). Moreover, both parties agreed to "*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 id.*, at p.147 ¶ 12 (emphasis added)).

By its express terms, the language of the Mediation Agreement that Respondent relies upon purports to be a waiver of Client's (and her husband's) rights. "A waiver is an intentional and voluntary relinquishment of a *known* right." *See State v. Boykin*, 324 S.C. 552, 556, 478 S.E.2d 689, 690 (Ct. App. 1996) (emphasis added); *accord Janasik v. Fairway Oaks Villas*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992) ("A waiver is a voluntary and intentional abandonment or relinquishment of a known right."). At the time of the Mediation Agreement, the Obituary Claim was not "known" to any of the parties, as it did not yet exist. Therefore, it would not have been within the scope of the Mediation Agreement's waiver provision. At the very least, this is a sufficient question to support the assertion of the Obituary Claim and to take this action outside of the scope of Rule 11. As Attorney Edmonds would have had, at the very least, a good faith argument that the Mediation Agreement did not waive the Obituary Claim, it was not appropriate for the trial judge to sanction her or for this Court to affirm such sanction.

Additionally, Client also sought to challenge the validity of the Mediation Agreement. Had that effort been carried out to its end and successful, that agreement would no longer waive any of Client's rights, let alone her right to make the Obituary Claim. These circumstances also made it appropriate for Attorney Edmonds to assert the Obituary Claim, notwithstanding the Mediation Agreement. Irrespective of the ultimate success of such a claim, there was at least a colorable basis for the assertion of that claim.

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

D. Respondent Has Not Made Any Argument Warranting the Excessive Amount of the Sanction Imposed on Attorney Edmonds

In support of the excessive sanctions imposed, Respondent argues that "It should also be kept on mind that Edmonds accused the Personal Representative of making false statements to the Department of Health and Environmental Control concerning his father's marital status. By virtue of this, she accused him of committing a felony." (*See Return*, at 10). This argument has no bearing on the amount of sanctions imposed for the Obituary Claim. Moreover, it is indisputable that the death certificate omitted the surviving spouse's name and that Respondent was the informant who provided the inaccurate information. DHEC ultimately amended the death certificate to add Client's name as the surviving spouse. But for Client's petition to amend the death certificate, it would still be factually incorrect. Similarly, but for Client's publishing of an accurate obituary, the decedent's obituary would have remained factually incorrect, excluding Client as his surviving spouse. Contrary to Respondent's assertions, Attorney Edmonds did not engage in some improper effort to harm Respondent or his reputation. Rather, she sought to correct existing factual defects in both the death certificate and the obituary. She did not undertake these efforts to accuse anyone of committing felonies, but rather to ensure accuracy.

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.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

Barbara J. Wagner, Esq.

Barnwell, Whaley, Patterson & Helms, LLC

288 Meeting Street, Suite 200 (29401)

Post Office Drawer H

Charleston, SC 29402

(843) 577-7700 Fax: (843) 577-7708

mdc@barnwell-whaley.com

bwagner@barnwell-whaley.com

Attorneys for Appellants/Respondents Law

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

Deirdre W. Edmonds, individually

Charleston, South Carolina

June 5, 2020

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In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY
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The Honorable Roger L. Couch

Appellate Case No. 2017-002290

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v.

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Of whom Robert Bryan Harwell, individually and as the Personal
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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' Reply in Support of 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 June 5, 2020, addressed to the following attorneys of record:

Kevin M. Barth, Esq.
Ballenger, Barth, Hoefler 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.
Orr Elmore & Ervin, LLC
PO Box 2527
504 S. Colt Street
Florence, SC 29503
Attorney for Respondent/Appellant Robert Bryan Harwell, individually and as the Personal Representative of the Estate of David W. Harwell

Blake A. Hewitt, Esq.
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
Attorney for Respondent/Appellant Robert Bryan Harwell, individually and as the Personal Representative of the Estate of David W. Harwell

Deborah B. Harwell, *Pro Se*
1459 River Highway
 Mooresville, NC 28117
Respondent/Appellant

John Harleston
S.C. Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

Barbara J. Wagner, Esq.

Barnwell, Whaley, Patterson & Helms, LLC

288 Meeting Street, Suite 200 (29401)

Post Office Drawer H

Charleston, SC 29402

(843) 577-7700 Fax: (843) 577-7708

mdc@barnwell-whaley.com

bwagner@barnwell-whaley.com

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



REPLY TO SOUTH CAROLINA OFFICE

John W. Fletcher, Esquire
jfletcher@barnwell-whaley.com

June 5, 2020

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Deborah B. Harwell v. Robert Bryan Harwell, et al; and SCDHEC v Law Office of
Deirdre W. Edmond, PA, et al
Appellate No. 2017-002290
BWPH File No.: 59.026

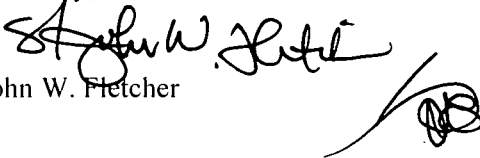
Dear Ms. Kitchings:

Please find enclosed for filing Appellants/Respondents Law Office of Deirdre W. Edmonds, PA and Deirdre W. Edmonds' Reply in Support of Petition for Partial Rehearing and Suggestion of Rehearing *en Banc*. Pursuant to the March 20, 2020 Order and May 29, 2020 Amended Order of the South Carolina Supreme Court, we are sending only one unbound original to the Court for filing.

As indicated in the enclosed Proof of Service, we are also serving a copy of the same on counsel of record.

Thank you for your assistance.

Sincerely,


John W. Fletcher

JWF:jgc
Enclosure

cc (w/enclosure)

Kevin M. Barth, Esq.
Gena Phillips Ervin, Esq.
Blake A. Hewitt, Esq.
Deborah B. Harwell, Esq.
John Harleston

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www.barnwell-whaley.com

SOUTH CAROLINA OFFICE:
288 Meeting Street, Suite 200, Charleston, SC 29401
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:
201 N. Front Street, Suite 1003, Wilmington, NC 28401
P 910.679.1388 F 910.679.4663

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