

93509

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 05 2020
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is Appellant.

**MOTION FOR JUDICIAL NOTICE AND EXPEDITED
CONSIDERATION OF APPEAL BASED ON
ATTORNEY GENERAL'S OCTOBER 2020 PUBLIC RELEASE OF
DOCUMENTS BEARING ON CRITICAL ISSUES HEREIN**

Based on documents publicly released under FOIA for the first time by the Attorney General of South Carolina [“AG” or “Attorney General”] in October 2020 [the “AG’s October 2020 Documents”], and actions of Respondent Tommie Rae;¹ her counsel, including the law firm of Sweeny, Wingate and Barrow, P.A. [“SWB”]; and others since June 17, 2020, Appellant respectfully moves this Court for judicial notice pursuant to Rule 201 SCRE of the following documents:

- a. Appellant’s Motion to Supplement the Record filed in the South Carolina Supreme Court [“Supreme Court”] on October 15, 2020, in Petition for Certiorari Case No. 2020-1383, formerly South Carolina Court of Appeals [“CA”] Case No. 2017-1899 [Exhibit 1];
- b. Appellant’s Motion to Supplement the Record filed in CA Case No. 2020-000967 on October 14, 2020 [Exhibit 2];
- c. Plaintiff’s Brief Regarding Issues for 11/2/20 Hearing, Richland County Case No. 2010-CP-40-4900 [“Richland 4900”] [Exhibit 3]; and
- d. Memorandum of Attorney General for 11/2/20 Hearing, Richland 4900. [Exhibit 4].

Appellant further moves for expedited consideration of this appeal, which is now ready for consideration by this Court.

The grounds of this motion are that the AG’s October 2020 Documents, with undisputed facts in the record in this appeal, confirm that for at least 7 ½ years SWB, with clear knowledge that it had no legal authority to do so, has used the prestige and power of the State/Attorney General to benefit Tommie Rae and SWB’s other private clients. Under Rule 201(b) the facts revealed by the AG’s October 2020 Documents are not subject to reasonable dispute and their

¹ To avoid confusion, all relatives and claimed relatives of entertainer James Brown are referenced herein by their first names. Tommie Rae has been identified in various pleadings filed by Respondents as having the last name Brown, Hynie and/or Hynie Brown.

accuracy is verified because the AG has publicly released documents to clarify his own positions at the relevant time.

The AG's October 2020 Documents show that SWB and other lawyers who were paid \$375 to \$500 an hour to work for Respondents Legacy Trust have concealed the important facts shown in the October 2020 Documents for at least 7 ½ years. [Exhibit 2 -I, p. 87²].

The AG's October 2020 Documents do not answer all of the questions in this pretrial appeal, but they have a direct, material impact on each question presented.

As set out more fully in the following memorandum, the relief sought herein may help end 7 ½ years of SWB's use of the prestige of the AG's office to help Tommie Rae and those aligned with her conceal public and nonconfidential documents to damage Robert Buchanan, Jr. and Appellant. Both justice and judicial economy will be served by the Court's granting the requested relief.

Memorandum in Support of Judicial Notice and an Order Expediting Appeal

The AG's October 2020 Documents are Material and Essential to this Appeal

The indisputable facts revealed by the AG's October 2020 Documents directly impact each issue in this appeal of a summary judgment order and various other orders issued in Richland 4900 prior to the conclusion of discovery. The facts contained in the April 24, 2013 letter of Chief Deputy AG John McIntosh, the primary subject of this motion, directly impact each issue in this appeal. [Exhibit 1-F, p. 35; 2-G, p.78] Those issues are:

² The fee schedules of Bauknight and other parties to the AG's 2008 settlement were filed with the Honorable Doyet A. Early, III, in 2009 and in the clerk's office. In March 2010 Judge Early issued an order finding that they were nonconfidential and directed that they be released by the clerk, but they could not be found in that office. Bauknight's Schedule of Compensation as fiduciary of the Legacy Trust for himself and his Nexsen Pruet (NP) lawyers, issued in 2008, was released by the AG in October 2020 for the first time.[Exhibit 2-I, pp. 86- 88]

1. Did the lower court err in failing to dismiss the Richland 4900 complaint?
2. Did the lower court err in granting Respondents AG, Tommie Rae, Legacy Trust and other Legacy Trust beneficiary-owners summary judgment ?
3. Do the orders issued by the lower court after the May 29, 2013 announced plan of Tommie Rae and Levenson to disregard *Wilson v. Dallas* 403 S.C. 411, 743 S.E.2d 746 (2013) and reinstate the AG's 2008 settlement violate Appellant's Due Process rights?

The AG's October 2020 Documents could not have been presented to this, or any court, earlier. They were not produced by SWB in discovery or the AG under FOIA despite valid discovery requests and multiple FOIA requests and rulings between 2011 and 2015.

The AG Failed to Release the Documents Until the Final Tommie Rae Ruling

The AG finally released the public October 2020 Documents under FOIA just two months after the Supreme Court of South Carolina finally rejected – for the second time – many of the claims the AG, Tommie Rae and Russell Bauknight “on behalf of” both the AG and Tommie Rae, have made since 2010 in the never-amended Richland 4900 complaint. Those claims include:

1. The incorrect claim that termination rights under the U.S. Copyright Act are all *Wilson v. Dallas* was about.
2. The incorrect claim that James Brown's Estate and 2000 Trust have no corpus to speak of.
3. The incorrect claim that Peter Afterman, Tommie Rae's termination rights consultant since 2013³, properly valued Brown's music empire at \$4.7 million.
4. The incorrect claim that Brown's 10,000 items of tangible personal property and his right of publicity are worth zero, or near zero, as determined by Afterman.⁴
5. The incorrect claim that Tommie Rae's elective share claim is a “slamdunk.”

³ See Declaration of Afterman, filed 9/4/20, Ex. 2-A, pp 63-64.

⁴ Although the AG has claimed in one FOIA case that nobody in the AG's office reviewed the Afterman claimed \$4.7 million, the AG used it to accuse Buchanan and Appellant of a federal felony. .

6. The incorrect claim that the AG's 2008 settlement which gave Tommie Rae about \$1 million a year and ¼ of Brown's charity for half of her termination rights and those of her son James, if any, was good for Brown's charity.
7. The incorrect claim that without the AG's 2008 settlement there will be nothing in Brown's charity by 2023.
6. The incorrect claim that it is good for James Brown's charity to "stipulate" that Tommie Rae is his spouse.
7. The incorrect claim that it was good for James Brown's charity in 2008 for the AG to stop the estate's DNA-testing protocol and declare 6 Will/Trust contestants as Brown's children and heirs under the Copyright Act.⁵
8. The incorrect claim that the Afterman \$4.7 million value "proves" that the AG's 2008 settlement saved taxes, even though it shifted about \$1 million a year and nearly 1/3 (31%) of Brown's "I Feel Good" charity out of the charity and over to a taxable trust for Forlando and others.

The AG's October 2020 Documents Confirm SWB's FOIA Disruption Since 2012

The AG's October 2020 Documents provide valuable, reliable facts about AG's 9 ½ year FOIA noncompliance, and SWB's use of the prestige of the State/AG to coordinate FOIA disruption and noncompliance with discovery abuse and disruption in Richland 4900.

The primary public documents withheld under both FOIA and Richland 4900 discovery are: the Wingate Contract to bring Richland 4900; the Legacy Trust and its January 2011 amendment; Tommie Rae's handwritten admissions about her bigamous 2001 ceremony with Brown; and the Afterman \$4.7 million claimed value.

Bauknight's Schedule of Compensation for himself and the NP attorneys who served the Legacy Trust from 2009 until 2013, shows that Bauknight paid NP attorneys \$375 - \$500 an hour to prevent release of the Afterman claimed \$4.7 million valuation and other public

⁵ The public record shows that Tommie Rae and others have challenged the heir status of at least two of the six persons the AG "stipulated" to be children under the Copyright Act..

documents.[Exhibit 2-I, pp. 86-88.] Many are still working for Bauknight as he claims to work both “on behalf of” Tommie Rae and the AG in Richland 4900.

The Afterman \$4.7 million value originated with Tommie Rae’s lawyer in 2009 as a way to discredit “Bobadele,” and was carried out the following year by Afterman. The \$79 million devaluation of the music empire from its correct \$84 million to \$4.7 million did not save taxes, as claimed, and shifted \$1 million a year of income and nearly 1/3 (31%) of the charity over to a trust for Forlando and 5 others.

The Legacy Trust/Settlement Entity was amended in late 2010 by then-AG McMaster, Respondent Terry and others, and Terry’s interest was then transferred to Forlando. This was done in January 2011, the month Forlando planted the false Grammy© claim with KS, an Atlanta law firm.

The Wingate Contract is a public document subject to FOIA, and says this on its face.

All of the documents sought since 2011 have been shared with Tommie Rae, Afterman, Levenson and numerous others working to dismember the “I Feel Good” charity the AG has a statutory duty to protect.

With this knowledge, on January 20, 2012 SWB counsel Mark Gende, Esq., wrote Attorney General Alan Wilson and, “as your attorney” urged the AG not to comply with his FOIA duty to release the public Wingate Contract. The Gende letter was written about six months after the FOIA request was made; 5 months after Appellant’s FOIA suit was filed; and while Tommie Rae and other SWB clients were seeking to intervene in the FOIA case and obtain sanctions against Appellant.

Gende advised that the AG’s complying with the valid FOIA request for the public Wingate Contract would “certainly incur the sanction of costs and attorney fees in the pending

FOIA actions.” Gende advised the AG that this would be “more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.” [Exhibit 1-A, pp. 23, 24]

In addition, Gende counseled that the AG’s complying with his duties under FOIA “will jeopardize the rights of your co-litigants.”[p. 23]

What is startling is that for more than 8 years after SWB’s 2012 advice, the AG has still not released the Wingate Contract under FOIA.[Exhibit 3, pp. 95, 96; Exhibit 4, pp.101-103]

SWB itself refused to release the public Wingate Contract until ordered to do so in 2020. When released, SWB’s copy of the Wingate Contract contained one signature page different from that produced by Bauknight earlier under federal court order.

The AG’s production of its entire Wingate Contract will help explain how the signature of Respondent Terry got substituted for that of David Bell, Esq.

SWB’s role in the 9 ½ -year withholding of these public documents speaks directly to each issue in this appeal, especially in light of the April 24, 2013 letter of Chief Deputy AG McIntosh.

The AG Confirms in 2013 that the AG is Not a Client of SWB in Richland 4900

On February 27, 2013, the Supreme Court issued the first *Wilson v. Dallas* decision. Footnote 29 urged the AG to conclude Richland 4900 and the FOIA cases “in the first instance.”

On February 14, 2013 the AG advised the Supreme Court of its intentions to get out of Richland 4900 and conclude the FOIA cases.

Between February 27 and April 23, 2013, SWB attorneys Kenneth Wingate, Esq., and Everett Kendall, Esq., met with AG Wilson and presented a TERMINATION OF REPRESENTATION document. [Ex. 1-B, C, D & E, pp. 25 – 33, Ex. 2 – C, D, E & F, pp. 68-76.]

On March 6, 2013 Appellant personally told AG Wilson, Chief Deputy Mc McIntosh, and Solicitor General Robert Cook about the damage to Brown’s charity and its copyrights caused by

the Afterman/Bauknight \$4.7 million value and Bauknight claims to the IRS that Tommie Rae was Brown's spouse.

Solicitor General Cook testified four years later in Aiken 1337 that he believed Appellant was competent and concerned about Brown's charity, not the greedy, officious intermeddler she has been characterized as being by SWB, Tommie Rae and those aligned them. AG Wilson failed to recall the substance of the meeting in his 2017 deposition, but did not dispute the recollection of Appellant and the Solicitor General. AG Wilson testified that he knew nothing about the \$4.7 million claimed value or Richland 4900 and had been trying to get out of Richland 4900 since 2013.⁶

On April 24, 2013, the AG, through Sr. Asst. AG McIntosh, advised SWB (Kendall) that the AG never had an attorney-client relationship with SWB; that the AG had never been SWB's client in Richland 4900; and that if *Wilson v. Dallas* remained the same, SWB would have to disgorge all the funds paid to it in Richland 4900. [Exhibit 1-F, p. 35; 2-G, p. 78.]

Chief Deputy AG McIntosh advised SWB in part:

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of the Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

... As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.*Id.*

The *Wilson v. Dallas* decision stood as it was, except that it voided the PR/trustee appointment of Bauknight under Brown's estate plan.

⁶ In 2017 AG Wilson had not been told about the October 2016 sworn testimony of Governor McMaster that then-AG McMaster never authorized SWB to bring Richland 4900 in the name of the State/AG.

In 2013 Afterman began working for Tommie Rae's lawyers, helping her claim termination rights as Brown's spouse while also speaking almost daily to Bauknight and being paid from Brown's charity.

Hynie and SWB Use Prestige and Power of AG Without Authority in Richland 4900

On May 10, 2013 SWB, without revealing anything about the April 24 letter from AG McIntosh, SWB secured a stay of Richland 4900 and both FOIA cases which lasted until March 2016.

By 2016 the May 26, 2013 plan of Tommie Rae and Levenson⁷ to reinstate the AG's 2008 settlement was virtually complete. The Afterman \$4.7 million value had shifted about \$1 million a year and nearly 1/3 (31%) of Brown's charity to the family trust for Forlando and others, increasing it tenfold. SWB had been hired by Bauknight to help Forlando not pay for the legal fees for his 4-year effort (2008 – 2012) to reinstate felon David Cannon as trustee of the 2000 Trust. And the circuit court had declared Tommie Rae to be Brown's spouse. In addition James was awarded \$700,000.00 in legal and GAL fees. And Tommie Rae had moved to London, U.K. with \$1.75 million SWB had told the Richland 4900 court was property of the Legacy Trust.

From March 2016 until September 2017 the stay in Richland 4900 was lifted. During this time, SWB and Bauknight secured more than 15 orders to help Tommie Rae, Forlando and those who remained aligned with them. Their efforts shifted slightly to assure that the termination rights proceeds of Tommie Rae and James not be used to pay the costs of Richland 4900.⁸

⁷ Levenson and Tommie Rae's attorney Medlin announced to Judge Early on May 29, 2013 their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

⁸ Order were issued dropping the AG as a party under Rule 21 SCRPC, then granting him summary judgment as to Appellant's and Buchanan's counterclaims. Order, 6. 23/17, Am. ROA, p. 188-203. SWB was allowed to spend 5 consecutive days in Appellant's home office in May 2017, and copied nothing. SWB also secured protective orders as to Tommie Rae, Kendall and Wingate. Respondents Larry, Daryl, Tonya, and others. See Am ROA, pp. 152 – 204.

Reversing positions, SWB and Bauknight secured an order finding that Respondent Legacy Trust never existed, even though Tommie Rae's attorney Alan Medlin, Esq., claimed it did exist and Bauknight should be "knighted" for the work he had done for Tommie Rae and other owners. [Am. ROA, 155- 158]. Both FOIA actions were dismissed. [Am. ROA, pp. 155 – 158; 163-165;165-166]. Protective Orders were issued preventing or curtailing deposition testimony of Tommie Rae [Am. ROA 178-180], SWB attorneys Kenneth Wingate, Esq. and Everett Kendall, Esq., [Am. ROA, pp 186-187] Former Levenson clients, Larry, Daryl, Tonya, Yamma, Venisha and Deanna, faced delays or orders curtailing of their depositions. [Am. ROA, pp. 167 – 171]

An extraordinary March 2017 order directed that an affidavit of Appellant be placed under seal without review, and that all future affidavits of Appellant be placed under seal. [Am. ROA pp.176, 177] ⁹

From September 2017 until November 2020, SWB and Bauknight, without informing any court of the April 2013 events, resisted every effort to lift the stay in Richland 4900, actively helping Tommie Rae escape to London, U.K. with \$1.75 million in termination rights proceeds she and SWB had assured the Richland 4900 court in 2010 were in the Legacy Trust, which SWB described to the Honorable Casey Manning as the "Charitable Trust Settlement Entity" which "receives all assets, royalties, tangible & intangible property" of Tommie Rae and other Respondents.

The stay was imposed again in September 2017 and SWB has bitterly resisted lifting it and concluding discovery in Richland 4900 for more than 3 years.¹⁰ The FOIA cases are still pending.

⁹ Also see Exhibit 2-J, pp. 90-91.

¹⁰ Some of the State actions taken by SWB and Bauknight on behalf of the AG and Tommie Rae during this time are reflected in the Amended ROA at pages 152 – 205 (orders), and pages 699 – 986 (pleadings and motions).

SWB State Action to Support the False Felony Claim of Tommie Rae

In the 18 months Buchanan and Appellant were PR/Trustees they brought in \$7.83 million, averaging more than \$5.2 million per year. They delivered \$99 million of assets to Bauknight. The TIAA debt had been reduced from \$15 million at Brown's death to \$11.3 million, with a a \$2 million escrow to be applied to the last payment.

On August 30, 2009 Tommie Rae's attorney proposed to discredit "Bobadele" by devaluing Brown's copyrights to \$24 million or less and his right of publicity at zero..

On May 19, 2010 SWB sued Buchanan and Pope, claiming in the Richland 4900 complaint both that they should have accepted a \$100 million offer and that they had committed the federal felony of overstating the value of Brown's assets in IRS filings to get a \$5 million commission. [See Complaint, Am, ROA 2105-228]

In September 2010 the Afterman claimed \$4.7 million value arrived. It was absurd.

Tommie Rae and Bauknight withheld the Afterman \$4.7 million value from the *Wilson v. Dallas* court from September 2010 until May 2011, days after the final briefs in *Wilson v. Dallas* were filed. Then they began using it to accuse Buchanan and Appellant of a federal felony in Supreme Court proceedings.

Buchanan and Appellant immediately began to seek the Afterman \$4.7 million valuation in discovery and under FOIA. It has not been released 9 ½ years later.

For 7 ½ years SWB and Bauknight, both acting on behalf of the State/AG and Tommie Rae, have made the false felony claim and false claim, based on the Afterman \$4.7 million value, that the AG's 2008 settlement saved taxes, the backbone of Richland 4900. While they did so, they concealed the Afterman \$4.7 million valuation.

Forlando and Appellant have both seen the Afterman \$4.7 million valuation. Forlando, even though he benefitted immensely from it, has testified under oath that the Afterman \$4.7 million valuation is “bogus.” He is correct.

The AG’s October 2020 Documents provide clear proof that SWB and Bauknight, for the last 7 ½ years have had no authority to use the power of the State to conceal this document to damage Buchanan and Appellant for the benefit of Tommie Rae and Forlando.

SWB Contradicts Testimony of the Governor Which Confirms Lack of Authority

In 2016 now-Governor McMaster testified emphatically under oath in Aiken 1337 that as AG he did not authorize SWB to sue Buchanan and Appellant in Richland 4900.

In 2017, compelled to testify by the Honorable Jean Toal, Acting Circuit Judge, Kendall and Wingate did not disclose the April 24, 2013 letter and said they were unaware of any change in SWB’s Richland 4900 clients.

Judicial Notice will Serve the Interests of Justice More than a Supplement to the ROA

The State action in Richland 4900 has gone on for 10 ½ years for the benefit of Tommie Rae and SWB’s other private clients. A motion to supplement will likely delay this appeal further.

“Few appeals involve the need for a supplemental record.” Toal, Walker, Baker, *Appellate Practice in SC*, 3d ed., p. 417. Although Appellant requests judicial notice, rather than supplementation of the record, this case is one of those rare instances in which this Court should take notice of facts outside the record. The just-disclosed documents bear directly on the constitutional issues in this appeal. Although presentation of evidence for the first time on appeal is unusual, appellate courts have the discretion “to make limited exceptions to this rule when ‘injustice might otherwise result.’” *In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Appellate courts have “the inherent

equitable power to allow supplementation of the appellate record if it is in the interests of justice.”

CSX Transp. Inc. v. City of Garden City, 235 F.3d 1325, 1330 (11th Cir. 2000).

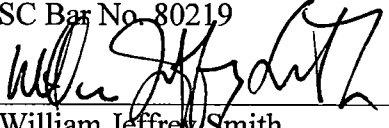
Conclusion

For the foregoing reasons, Appellant submits that this Court should take judicial notice of the above-listed filings and expedite its consideration of this appeal.

Respectfully Submitted,

Charles E. Carpenter, Jr.
Carpenter Appeals & Trial Support, LLC
4825 Portobello Rd.
Columbia, SC 29206
Telephone: (803) 758-2886
charlie@carpenterappeals.com
SC Bar No. 1133

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernailfirm.com
SC Bar No. 80219



William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
Email: wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

Attorneys for the Appellant

November 5, 2020

Exhibit 1

RECEIVED

OCT 15 2020

STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2017-001899

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is Petitioner.

**MOTION TO SUPPLEMENT THE RECORD BASED ON
ATTORNEY GENERAL'S OCTOBER 2020 PUBLIC RELEASE OF
DOCUMENTS BEARING ON CRITICAL ISSUES HEREIN**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

This case¹ is an extraordinary lawsuit wherein the South Carolina Attorney General (the "AG"), represented only by private counsel shared with Tommie Rae Hynie a/k/a Tommie Rae Hynie Brown ("Tommie Rae") and more than a dozen other private individuals, sued two South Carolina citizens for money damages in an effort to strong-arm them into dropping the appeal which would become *Wilson v. Dallas* before this Court. More than a decade after the filing of this action, public documents recently released by the AG shed stunning light on the relationship between the AG and private law firm Sweeny, Wingate and Barrow, P.A. ("SWB"). These documents having been previously withheld by SWB and the AG in the lower courts.

The AG's bringing of this lawsuit and representation by shared private counsel violates Petitioner's constitutional rights, and she (along with Robert L. Buchanan, Jr., who was originally a co-Defendant) has repeatedly raised and preserved these issues in the circuit court and the court of appeals. Because these long-withheld documents are extremely relevant to this Court's analysis in deciding whether to review this case, Petitioner respectfully moves pursuant to Rule 212(b) for an order supplementing the record on appeal (ROA), so that the attached documents may be included in the Appendix herein.

This motion is based on new public information released by Respondent Attorney General under FOIA in October 2020, but which should have been released in discovery in this case and under multiple FOIA requests made by Petitioner and other South Carolina citizens between 2011 and 2014.

¹ This motion is filed with a Petition for Writ of Certiorari seeking review of the Court of Appeals' opinion, which Petition is incorporated herein.

The grounds of this motion are that these public admissions of the Attorney General in the October 2020 documents confirm that in 2012 SWB urged and advised the Attorney General not to comply with valid FOIA requests. Further, the October 2020 documents show that Respondents' counsel, SWB, was never engaged by the State/AG or authorized to bring Richland 4900 in the name of the State/AG.

The AG's October 2020 FOIA documents also show that since 2013 SWB has had actual knowledge of the State/AG's position that SWB has never had authority to act for the State/AG in Richland 4900. Despite this, SWB has continued to use the prestige and power of the Office of the Attorney General in Richland 4900 for the benefit of Respondent Tommie Rae, SWB's principal client, and those aligned with Tommie Rae.

The AG's October 2020 disclosures, when considered with the public record and prior requests to lift the stay, make clear that since at least 2016 SWB has, without authorization, employed the power and prestige of the Office of the Attorney General to help Tommie Rae and those aligned with her render the contested issues in this case moot and deprive the Appellate Court of jurisdiction over both the parties and the property which is the subject of this appeal.

This motion is supported by motions of Petitioner to lift the stay in Richland 4900 appeals; the AG's October 2020 FOIA documents; the actions taken by SWB since April 24, 2013 which purport to be on behalf of the State/Attorney General; and the memorandum which follows.

Summary of Need to Supplement Record on Appeal

The documents attached hereto disclose startling facts about this extraordinary case, in which the AG has been a named Plaintiff for more than ten (10) years and in which Petitioner and Buchanan raised and preserved constitutional issues related to the AG's participation and

representation by private counsel SWB, which purported to co-represent the AG, Tommie Rae and more than a dozen other private Plaintiffs, for that same span of time.

The newly released documents include:

1. January 20, 2012 letter from SWB attorney Mark V. Gende, Esq., to AG Wilson ("As [the AG's] attorney in this matter, [Gende is] writing to advise [the AG] against releasing" any portion of the fee contract between SWB and the AG, which Petitioner had requested under the FOIA). Attached as **Exhibit A**.
2. March 25, 2013 letter from SWB attorney Everett A. Kendall, II, Esq., to AG Wilson, Chief Deputy AG John W. McIntosh, Deputy Attorney General Robert D. Cook and Asst. Deputy AG C. Havird Jones. (requesting "formal meeting" "to discuss the termination of [SWB's] representation of the Office of the Attorney General"). Attached as **Exhibit B**.
3. April 12, 2013 letter of Mr. Kendall, to AG Wilson, Mr. McIntosh, Mr. Cook and Mr. Jones. (Transmitting "Termination Agreement to end Sweeny, Wingate and Barrow, P.A.'s representation of the Attorney General.") Attached as **Exhibit C**.
4. Unsigned April 2013 "Termination of Legal Representation," noting that the Contract for Legal Services which has been the subject of multiple discovery motions and FOIA requests created "a direct attorney-client relationship" between SWB and the AG; indicating that the AG would pay some portion of SWB's fees; and proposing that all communications between SWB and the AG, as well as communications between the AG and others and the Termination document itself "are, and shall remain, confidential and protected by the Attorney-Client Privilege." Attached as **Exhibit D**.
5. April 23, 2013 letter of Mr. Kendall, to Mr. McIntosh. (Seeking signature on Termination agreement; noting that the AG had "drawn a line in the sand with respect to [SWB's] attorney fees and expenses;" and saying that SWB would "act accordingly.") Attached as **Exhibit E**.
6. April 24, 2013 letter of Mr. McIntosh to Mr. Kendall. (Noting that the AG would not pay SWB's fees because it "did not employ [SWB's] services" and advising that "the Office of the Attorney General has never been a client of [SWB].") Attached as **Exhibit F**.
7. A January 5, 2011 letter from Mr. Kendall to Russell Bauknight, regarding this case, with the entire 3 ½ page body of the letter and attachment redacted, but showing copies sent to two members of the AG's office, as well as several lawyers representing private Plaintiffs in other matters. Attached as **Exhibit G**.

These documents show that SWB never represented the AG in Richland 4900, despite its 2010 filing of this case on the AG's behalf, and SWB never advised the lower court or the court of appeals that it did not represent the AG.² They further show that the AG, from April 2013 until October 2020, failed to disclose to the lower courts that it was never a client of SWB.³ The Record on Appeal includes confusing and inconsistent evidence and positions, because these documents which bear directly on issues in controversy were never released or produced until October 2020.

When examined in March 2017 about Richland 4900, SWB attorney Kenneth B. Wingate, Esq., testified that his representation of all Plaintiffs in this action continued (as of March 2017); that his firm *did* represent the AG; and that there had been no change in his representation since 2010. The relevant pages of Mr. Wingate's deposition, along with the Order of the Honorable Jean H. Toal, Acting Circuit Judge, which directed that Mr. Wingate and Mr. Kendall testify on matters related to the authorization to file and continue Richland 4900, are attached as Exhibit H.

Petitioner seeks this Court's review of five lower court orders which, without SWB or the AG acknowledging the 2012 and 2013 correspondence just released:

1. Dropped the AG as a party to this action under Rule 21 [R. 2; 19-24];
2. Denied Petitioner's right to take the deposition of AG Alan Wilson, who was in office during the time the attached documents were generated, based in large part on a finding

² At the first hearing in August 2010, Wingate introduced C. Havird Jones, Esq., who is a member of the AG's office, as "an attorney with the South Carolina Attorney General's office, one of our clients." [R. 1122] In 2013, SWB did file a motion to be relieved as counsel [R. 810], alleging generally that the AG no longer required its services, but never sought to have it heard; continued to make filings and act on behalf of all Plaintiffs; and, in fact, withdrew the motion to be relieved in 2016, prior to the lower court's hearing it.

³ At the 2016 hearing on the AG's motion to be dropped as a party, Mr. Jones said of SWB, "they're our lawyers in effect." [R. 1224] The AG at times tried to nuance its position on whether it was represented by SWB, but *never* took the position in filings or argument that it had never been represented by SWB in Richland 4900. For example, later in that same 2016 hearing, Mr. Jones said, "Mr. Bauknight has hired the Wingate firm, we're satisfied with them, they're our lawyers. . . ." [R. 1227]

that any testimony AG Wilson might give would be protected by the attorney-client privilege [R. 33-38];

3. Relieved all Plaintiffs from default on Petitioner and Buchanan's counterclaims, based in part on a finding that the AG could not be held in default [R. 51-53]; and
4. Declined to disqualify SWB as the AG's counsel or enjoin SWB or Bauknight from purporting to speak "on behalf of" the AG in this case [R. 59-60].

"Few appeals involve the need for a supplemental record." Toal, Walker, Baker, *Appellate Practice in SC*, 3d ed., p. 417. This case, with the just-disclosed documents which bear directly on the constitutional appellate issues which were before the Court of Appeals and which Petitioner asks this Court to hear, is one of those few cases where a supplement should be allowed. Although presentation of evidence for the first time on appeal is unusual, appellate courts have the discretion "to make limited exceptions to this rule when 'injustice might otherwise result.'" *In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Appellate courts have "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice." *CSX Transp. Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000).

The attached documents show that the AG had, by 2013, taken the position that SWB did not represent the State/AG in Richland 4900, and had never represented it. Nonetheless, even in the 2019 Briefs filed in this case in the Court of Appeals, SWB argued that it "speaks for the Plaintiffs, both governmental and individual, in this litigation." (Respondents' Brief at 29) In its own Brief, the AG likewise argues that representation of the AG by private counsel is appropriate, but again makes confusing statements regarding whether SWB actually represents or has represented the AG. (See Respondent AG's Brief at 23-24). Neither SWB nor the AG suggested in their Briefs that the AG had *never* been represented by SWB.

Because the new documents show not only that the court of appeals' opinion was erroneous (as argued in the Petition for Certiorari), but also that neither the Court of Appeals nor the circuit court had the benefit of compelling evidence in possession of both the AG and SWB which sheds light on the constitutional and other issues flowing from the AG's bringing of this 2010 lawsuit and SWB's decade-long insistence that it represented the AG and did so appropriately.

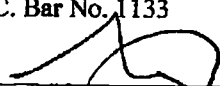
CONCLUSION

Based on the foregoing, this Court should allow the documents attached hereto to be added to the Record on Appeal and Appendix herein for consideration by this Court along with the Petition for Writ of Certiorari.

Respectfully submitted,

Charles E. Carpenter, Jr.
Carpenter Appeals & Trial Support, LLC
4825 Portobello Road
Columbia, SC 29206
Telephone: (803) 758-2886
charlie@carpenterappeals.com
S.C. Bar No. 1133

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
wjstv@mindspring.com
SC Bar No. 0005225


Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernaillawfirm.com
S.C. Bar No. 80219

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

October 14, 2019.

Counsel for Appellant

RECEIVED

OCT 15 2020

S.C. SUPREME COURT

EXHIBIT A

RECEIVED

SWB

JAN 20 2012

S.C. Attorney General's Office WINGATE & BARROW P.A.
Civil Section

Referred to: Victoria Cook
Answered: Mr. Victor Stora
T. Meyers

January 20, 2012

JAN 23 2012

Received by _____
Reviewed by/Date _____
Referred to/Date _____
Notes: _____

Reply to Main Office
Mark V. Gende
(803) 256-2233 x121
mvg@swillaw.com

URGENT - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY

Alan Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pops and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above-referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants' claim to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

MAIN OFFICE T: 803-256-2233 F: 803-256-0177 1525 LADY ST (29201) • POST OFFICE BOX 12170 • COLUMBIA, SC 29211
FEE FEE OFFICE T: 843-878-0350 F: 843-878-0903 115 GARGAL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

January 20, 2012
Page 2 of 2

both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

EXHIBIT B

SWB

SWEENEY WINGATE & BARROW P.A.

March 25, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

Via Hand-Delivery

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Harvard Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

S.C. Attorney General's Office
Civil Section

MAR 25 2013

Received by: AK
Reviewed by/Date: AK
Referred to/Date: _____
Notes: _____

RE: **URGENT MEETING REQUEST**
Our File: 4077-7389

Dear Attorney General:

On several occasions over the last week, Ken Wingate has made a verbal request for a meeting with you and other attorneys in your office. To date, we have only gotten verbal assurances that such a meeting will occur, but with no specific date and time provided.

This is a formal request for a meeting with you and the other attorneys in your office. The purpose of the meeting is to discuss the retention of our representation of the Office of the Attorney General. Given the recent statements of your office contained in filings with the South Carolina Supreme Court and the Circuit Court for Richland County, as well as statements made to the press and in our conversations, this meeting is of the utmost importance and urgency.

Please confirm a time when we can meet on Tuesday, March 26, 2013 or Wednesday, March 27, 2013.

Yours truly,

SWEENEY WINGATE & BARROW, P.A.



Everett A. Kendall, II

MAIN OFFICE: T: 803-217-3447, F: 803-217-3447, 1515 LAW ST. (20th fl) Post Office Box 1272 Columbia, SC 29211
PER DEP OFFICE: T: 803-778-0390, F: 803-778-0390, 115 Canal Way Suite 8 Post Office Box 88 Columbia, SC 29201

EXHIBIT C

S·W·B

SWEENEY WINGATE & BARROW P.A.

April 12, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Havird Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

RE: Proposed Termination of Representation Agreement
Our File: 4077-7389

Dear Attorney General:

In follow up to our meeting of March 27, 2013, I have drafted the enclosed Termination Agreement to end Sweeney, Wingate and Barrow, P.A.'s representation of the Attorney General in all matters. We would be happy to have further discussions about the particulars, but this draft covers the main issues of concern.

Also, we left with you a Consent Order relieving our firm as counsel in the 4900 case. I would like to submit that to Judge Manning as soon as possible to avoid any confusion in upcoming proceedings, especially in light of your having filed a Motion to be dropped from the lawsuit.

If further discussion is needed, please do not hesitate to call.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Everett A. Kendall, II

RECEIVED

APR 15 2013

MAIN OFFICE: T• 803-256-2233 F• 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 42130 • COLUMBIA, SC 29242
PEE DEE OFFICE: T• 843-878-0390 F• 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 68 • FARMVILLE, SC 29110
Reviewed to: *McIntosh / dm*
Answered: *CC: Bob / Sander*

EXHIBIT D

TERMINATION OF LEGAL REPRESENTATION

This Agreement as to the termination of legal representation (hereinafter "Termination Agreement") by the law firm of Sweeny, Wingate & Barrow, P.A. (hereinafter "the Firm") and the Attorney General for the State of South Carolina (hereinafter "the Attorney General") is entered this _____ of April, 2013 and is effective retroactively to March 25, 2013.

Whereas, the Firm and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee") entered into an Agreement for Legal Services (hereinafter "Engagement") on or about May 18, 2010; and

Whereas, the Attorney General ratified and accepted the terms of the Engagement on about May 18, 2010, thereby creating a direct attorney-client relationship; and

Whereas, since that time, the Firm has provided valuable legal services to and on behalf of the Attorney General; and

Whereas, the Attorney General does now wish to terminate its engagement with the Firm, without cause;

IT IS THEREFORE AGREED AS FOLLOWS:

The Engagement of the Firm in all matters relating to the Estate of James Brown, is hereby terminated, without cause. Specifically, but without limitation, the Firm is relieved of all obligations arising from the Engagement. To the extent that the Firm has provided legal services and/or representation beyond that which is specifically described in the Engagement, representation on those issues is also hereby terminated without cause. Effective retro-actively to March 25, 2013, Sweeny, Wingate & Barrow, P.A. shall have no obligation to the Attorney General in any legal matter.

It is the understanding of the Firm that the Attorney General wishes to withdraw as a party-plaintiff from Bauknight, et al. v. Pope, Case No. 2010-CP-40-4900 (hereinafter "Case 4900"). The Office of the Attorney General will handle all matters necessary to effect that objective. The Firm shall have no responsibility to assist the Attorney General in this process.

The Attorney General further acknowledges that the Firm has provided valuable services to the Office of the Attorney General since May 18, 2010. For these services, the Attorney General agrees to pay the expenses and legal fees incurred on a *quantum meruit* basis, totaling _____ . Payment shall be made within 30 days of this agreement. The payment of these fees shall be credited to the remaining parties to the Agreement.

The Attorney General and the Firm warrant that all communications between them, as well as those among other parties to the Engagement are, and shall remain, confidential and protected by the Attorney-Client Privilege. Neither the Firm nor the Office of the Attorney

General shall disclose such communications to any person not party to the Agreement without the written consent of every party or an order of the Court. This document is included among the confidential communications.

The Office of the Attorney General shall refrain from making any disparaging remarks regarding Sweeny, Wingate & Barrow, P.A. Any reference to the termination of this relationship shall simply be described as arising out of the decision of the Attorney General to withdraw from Case 4900 and that the Firm's legal services are no longer required.

IN WITNESS WHEREOF, we have hereunto set our hand and seal at the County of Richland, State of South Carolina, this ____ day of _____, 2013.

Alan Wilson, Attorney General
State of South Carolina

Kenneth B. Wingate, Esquire
Sweeny, Wingate & Barrow, P.A.

EXHIBIT E

S·W·B

SWEENEY WINGATE & BARROW P.A.

April 23, 2013

Reply to: Main Office
Everett A. Kendall, II
(803) 256-2333 x 130
eak@swhlaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

John W. McIntosh
Chief Deputy Attorney General
Office of the Attorney General
P.O. Box 111549
Columbia, SC 29211

RECEIVED

APR 24 2013

Referred to McIntosh, S. Jones,
Approved Cook ds

RE: Russell L. Bauknight, et al. v. Adele I. Pope
Civil Action No. 2010-CP-40-04906
Our File: 4071-7389

Dear Mr. McIntosh:

I am in receipt of your letter of April 18, 2013, wherein you purport to respond to my letter of April 12, 2013. However, my letter did not request that the Attorney General withdraw from the 4900 case. That motion was made by the Attorney General's office on its own accord. I have made no recommendation on that subject. Rather, the purpose of my letter was to request that you sign a Termination of Legal Representation Agreement, and execute a Consent Order allowing us to withdraw as counsel for the Attorney General in the 4900 case.

I understand that you have now drawn a line in the sand with respect to our attorney fees and expenses. We will act accordingly.

I would appreciate a response from you with either signatures on the documents I have provided, an invitation to further discuss those documents, or an explicit statement that you will neither sign them nor discuss them further.

I remain,

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Everett A. Kendall, II

EAK/bcr

Main Office T: 803-256-2423 F: 803-256-0777 137 1/2 Lowry St. (2nd floor) Post Office Box 21670 Columbia, SC 29211
Per Due Office T: 803-878-8390 F: 803-878-0103 115 Cannon Way, Suite 200 Post Office Box 86 Taylorsville, SC 29551

EXHIBIT F



ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Bankright et al v Adele J. Pope
Civil Action No. 2010-CP-46-04900
Your file: 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/ds

SCANNED

REMBERT C. DENNIS BUILDING • Post Office Box 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

EXHIBIT G

S·W·B

SWBENY WINGATE & BARROW P.A.

January 5, 2011

Reply to: Main Office

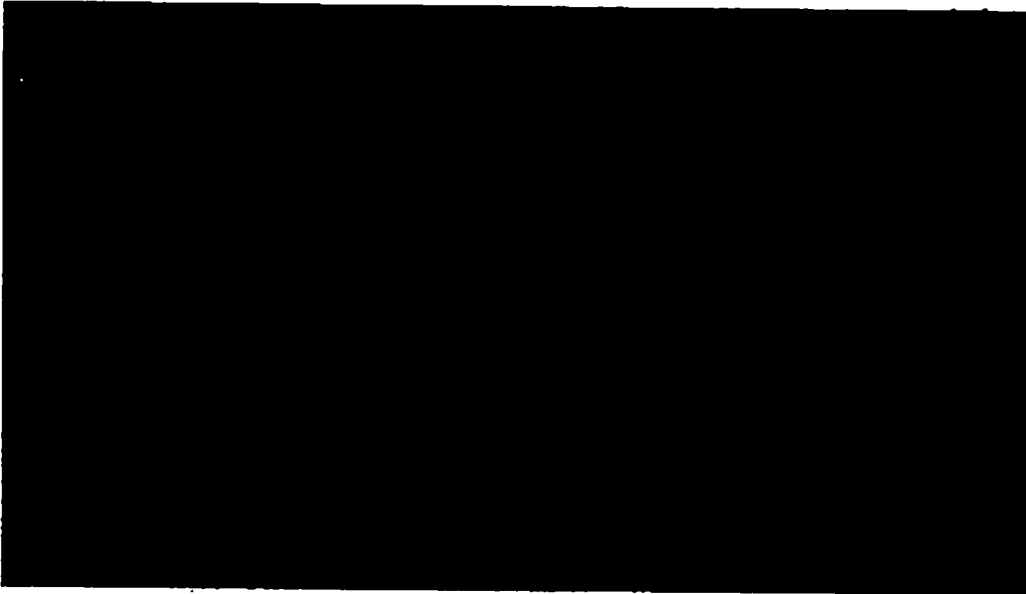
Everett A. Kendall, II
(803) 256-2233 x 130
eak@swblaw.com

Via Email

Russell L. Bauknight, CPA
Bauknight, Pietras & Stormer, P.A.
Post Office Box 1330
1517 Gervais Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-GC-40-00073
Claim No.:
Our File: 4077-7389

Dear Russell:



MAIN OFFICE T•803-256-2233 F•803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PIEDMONT OFFICE T•843-383-2146 F•843-383-6150 323 WEST HOME AVE. • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

Russell L. Bauknight, CPA
1/5/2011
PAGE 2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] he is
[REDACTED]

Russell L. Bauknight, CPA
1/5/2011
PAGE 4

[REDACTED]

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Everett A. Kendall, II

- cc: David B. Bell, Esquire
J. David Black, Esquire, Nexsen Pruet, LLC
C. Havird Jones, Jr., Esquire, Office of the Attorney General
Lori J. Christman, Levenson & Associates
Mary Frances Jowers, Esquire, Office of the Attorney General
Matt D. Bodman, Esquire, Matt Bodman, P.A.
Fred L. Kingsmore, Jr., Esquire, Nexsen Pruet, LLC
S. Alan Medlin, Esquire

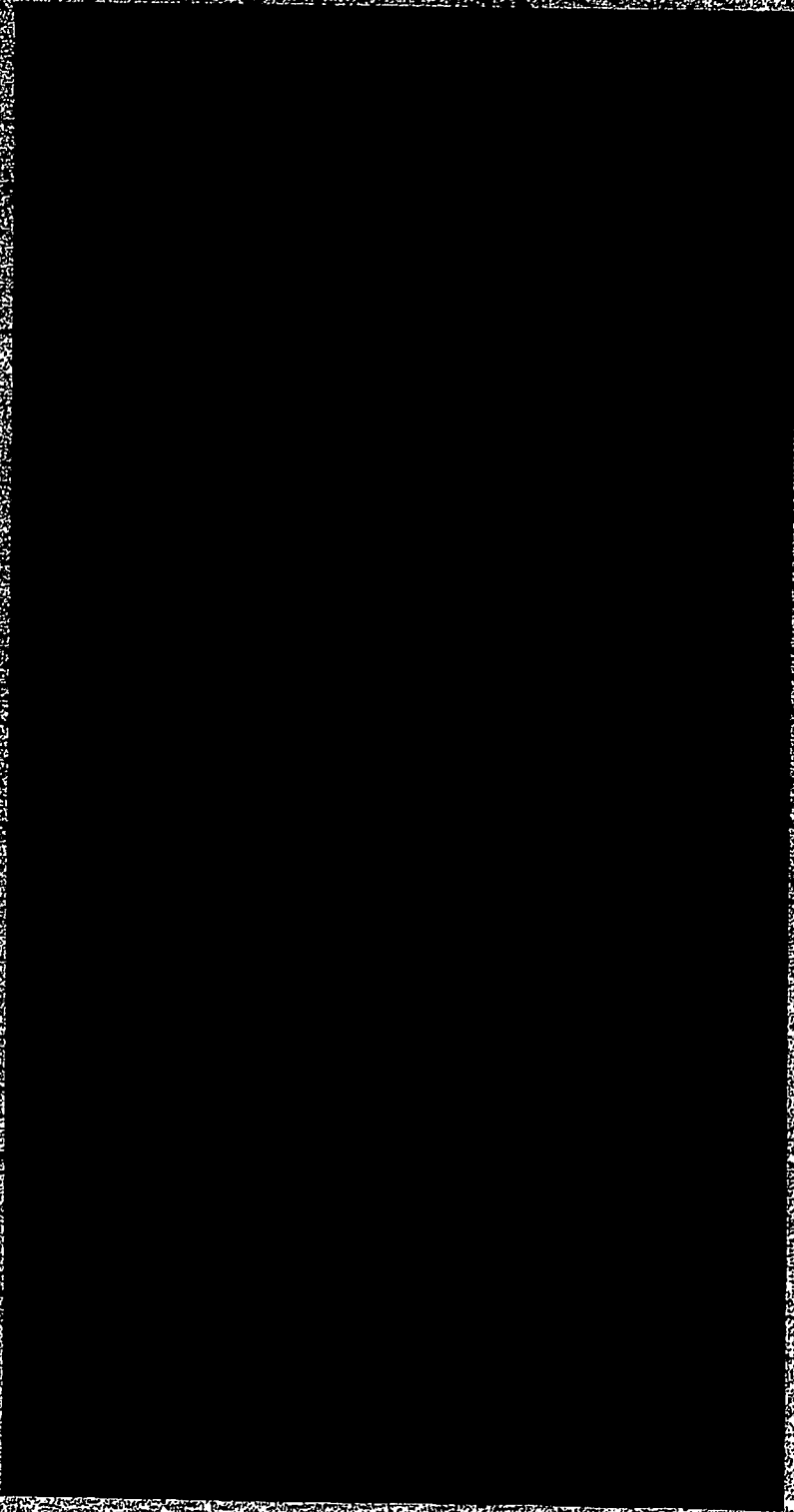


EXHIBIT H

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

FORM 4

Case No. 2013 CP02157
 Pending in Aiken Court
 JUDGMENT IN A CIVIL CASE

CASE NUMBER:

In re: Motion of Kenneth B. Wingate and Everett K. Kendra
 Adelle Pope

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(l), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(f), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to practice, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other _____

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

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

ORDER INFORMATION

This order ends does not end the case. *Motion of Kenneth B. Wingate and Everett K. Kendra to Dismiss their Additional Information for the Clerk: Deposition Subpoenas Denied.*

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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

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

Clerk of Court Judge *[Signature]* Judge Code 2269 Date 3-1-12

For Clerk of Court Office Use Only

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

**Plaintiff will be permitted to enjoin each of these attorneys on their authorization to file*

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

and criticize the lawsuit of the Attorney General and others against Robert Buchanan and Adelle Pope, filed May 19, 2010 and continuing today.

0267

043

Page 1		Page 3	
STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS	1	EXHIBITS (Continued)
COUNTY OF AJKEN	C/A No. 2012-CP-02-1337	2	Plaintiff's Exhibit No. 8.....45
Adale J. Pope,	)	3	(Email dtd 12/6/07 from Mr. Jones)
)	)	4	Plaintiff's Exhibit No. 9.....47
Plaintiff,	)	5	(Ltr dtd 7/30/09 from Mr. McHester)
)	)	6	Plaintiff's Exhibit No. 10.....49
vs.	)	7	(Partial transcript of Hearing dtd 8/30/10)
)	)	8	Plaintiff's Exhibit No. 11.....51
Estate of James Brown and	)	9	(Partial transcript of Hearing dtd 8/30/10)
The James Brown 2000	)	10	Plaintiff's Exhibit No. 12.....53
Irrevocable Trust,	)	11	(Agreement for Legal Services dtd 5/16/10)
)	)	12	Plaintiff's Exhibit No. 13.....61
Defendant.	)	13	Motion to Supplement Record, C/A No. 08-CP-2-1647)
)	)	14	Plaintiff's Exhibit No. 14.....63
)	)	15	(Plaintiff's Motion to Dismiss Petition for Writ
)	)	16	of Prohibition dtd 2/28/11)
)	)	17	Plaintiff's Exhibit No. 15.....65
)	)	18	(Plaintiff's Motion to Strike Dft. Pope's Offers of
)	)	19	Judgment)
)	)	20	Plaintiff's Exhibit No. 16.....68
)	)	21	(Appendix to Record on Appeal, C/A No.
)	)	22	08-CP-2-1647)
)	)	23	Plaintiff's Exhibit No. 17.....70
)	)	24	(Ltr dtd 6/20/08 from Mr. Lavenexon)
)	)	25	
DEPOSITION OF		STIPULATIONS	
KENNETH B. WINGATE, ESQ.		It is stipulated and agreed that this	
*****		deposition is being taken pursuant to the	
Monday, March 6, 2017		South Carolina Rules of Civil Procedure.	
2:08 p.m. - 3:51 p.m.		It is stipulated by and between counsel	
		and the witness that the reading and signing	
		of the following deposition be, and the same	
		are, hereby reserved.	
The deposition of KENNETH B. WINGATE,			
ESQ., was taken on behalf of the Plaintiff			
at the law offices of Gertz & Moore, LLP,			
1616 Laurel Street, Columbia, South			
Carolina, on the 6th day of March, 2017			
before Cassandra E. Vance, Court Reporter			
and Notary Public in and for the State of			
South Carolina, pursuant to Notice of			
Deposition.			

Page 2		Page 4	
1	APPEARANCES:	1	MR. HOWSER: Before we begin, can I ask
2	Adale J. Pope, Esquire	2	her just to mark the Order? You may be
3	Law Office of Adale J. Pope, P.C.	3	doing that, as well as the return?
4	1228 Walnut Street	4	MS. POPE: I have marked the Order as
5	Monterey, South Carolina 29108	5	Plaintiff's 1. Dave, if you want to mark
6	Appearing Pro Se	6	the return as your 1 or however, that's
7	William G. Newsome, III, Esquire	7	fine.
8	Newman Frank, LLC	8	MR. HOWSER: (Tendering.)
9	1230 Main Street, Suite 700	9	MS. POPE: Yeah. You want to mark that
10	Post Office Drawer 2426	10	as Defendant's 1?
11	Columbia, South Carolina 29201	11	MR. HOWSER: That's fine.
12	Attorney for the Defendant	12	MS. POPE: Yeah, sure.
13	R. Davis Howser, Esquire	13	(Defendant's Exhibit No. 1 was marked
14	Howser, Newman & Beasley, LLC	14	for identification purposes.)
15	1808 Washington Street	15	MS. POPE: Are your affidavits
16	Columbia, South Carolina 29201	16	attached, Dave?
17	Attorney for Mr. Wingate	17	MR. HOWSER: That's your --
18	INDEX	18	MS. POPE: Oh.
19		19	MR. HOWSER: -- return.
20	Direct Examination by Ms. Pope.....5	20	MS. POPE: Oh, oh, I'm sorry, my
21	Cross-Examination by Mr. Howser.....78	21	return.
22	Stipulations.....3	22	MR. HOWSER: Yeah, because it relates
23	Certificate.....79	23	to --
24	Verification of Deponent.....80	24	MS. POPE: Oh, I gotcha.
25	Exrata Page.....81	25	MR. HOWSER: -- the 30 questions, so.
EXHIBITS			
PAGE			
17	Defendant's Exhibit No. 1.....4		
18	(Return and Opposition to Motion)		
19	Plaintiff's Exhibit No. 1.....6		
20	(Judge Tol's order dtd 3/1/17, Form 4)		
21	Plaintiff's Exhibit No. 2.....6		
22	(Questions for Mr. Wingate and Mr. Mendall)		
23	Plaintiff's Exhibit No. 3.....6		
24	(Newsome, C/A No. 2010-GC-4800073)		
25	Plaintiff's Exhibit No. 4.....9		
	(Partial transcript of Mr. Buchanan dtd 2/3/17)		
	Plaintiff's Exhibit No. 5.....37		
	(Email dtd 7/31/08 from Mr. Rosen)		
	Plaintiff's Exhibit No. 6.....40		
	(Form 705)		
	Plaintiff's Exhibit No. 7.....42		
	(Handwritten notes)		

Page 13	Page 15
1 A. Yes.	1 Q. Is Jason Brown-Lewis your client?
2 Q. Is Deanna J. Brown Thomas your client?	2 A. To the best of my knowledge, yes.
3 A. Yes.	3 Q. Is Yanna N. Brown, individually and on
4 Q. Is Jason Brown-Lewis your client?	4 behalf of her minor children, Sydney Lumar and
5 A. Yes.	5 Carrington Lumar, your client?
6 Q. Is Yanna N. Brown, individually and on	6 A. To the best of my knowledge, yes.
7 behalf of her minor children, Sydney Lumar and	7 Q. Is Tanya Brown your client?
8 Carrington Lumar, your client?	8 A. To the best of my knowledge, yes.
9 A. Yes.	9 Q. And Vanisha Brown?
10 Q. Is Tanya Brown your client?	10 A. Same answer.
11 A. Again, I think that the answer to all of	11 Q. Is Larry Brown your client?
12 these is "yes" and let me explain myself.	12 A. Same answer.
13 I don't deal with these individuals	13 Q. Is Tracy Brown your client?
14 directly. As you'll learn through the course of	14 A. Same answer.
15 this deposition, I am the attorney through whom	15 Q. Has there been any change in your clients
16 this case was brought into our office.	16 since the commencement of this Wingate suit on
17 I have not been the principal attorney	17 May 19th, 2010?
18 dealing with these matters, so I am testifying as	18 A. To my knowledge, no.
19 to the best of my knowledge in each of these	19 Q. Was there a change of Attorneys General?
20 cases. And, again, I have said, to my knowledge,	20 A. Yes. Henry McFaster was the Attorney
21 yes, we represent all of these parties.	21 General. Alan Wilson is now the Attorney
22 Q. That's not my question. Is Tanya Bryant --	22 General.
23 Brown your client?	23 Q. Do you believe that Henry McFaster
24 A. To my knowledge, yes.	24 authorized you to bring the Wingate suit?
25 Q. Is Vanisha Brown your client?	25 A. Yes, I know that he did.

Page 14	Page 16
1 A. To my knowledge, yes.	1 Q. Okay. Tell me how that happened.
2 Q. Is Larry Brown your client?	2 A. I had a couple of meetings with the Attorney
3 A. To my knowledge, yes.	3 General at which this suit was discussed and he
4 Q. Is Larry Brown your client?	4 authorized us, serving as his counsel, to file
5 A. To my knowledge, yes.	5 the suit.
6 Q. Is Alan Wilson, in his capacity as Attorney	6 Q. Do you know when the meetings took place?
7 General of the State of South Carolina, your	7 A. Just prior to, meaning within the week or
8 client?	8 couple of weeks prior to the filing of the suit.
9 A. Yes.	9 Q. Okay. Did you tell the Attorney General
10 Q. Is Tameka Rae Brown, individually and on	10 that he would be named as a Plaintiff in the
11 behalf of her minor child, your client?	11 Wingate lawsuit?
12 A. Yes.	12 A. Yes.
13 Q. Is Daryl J. Brown your client?	13 Q. Personally?
14 A. I'm going to give the same answer, again,	14 A. Yes.
15 Adele, to the best of my knowledge, yes, yes,	15 Q. Who was present when you told him?
16 yes, yes, yes.	16 A. Had a couple of different meetings with him.
17 Q. Is Janice Vanisha Brown your client?	17 There was a meeting that I had with him and with
18 A. Yes, to the best of my knowledge.	18 Alan Medlin. There was a separate meeting that I
19 Q. Do you know whether she's a minor or an	19 had with him and some of his staff in his office.
20 adult?	20 Q. Okay. I want to, as carefully as I can, go
21 A. I do not know.	21 through those two meetings, please.
22 Q. Is Lindsey Delores Brown your client?	22 A. Uh-huh (affirmative response).
23 A. To my knowledge, yes.	23 Q. To the best of your recollection, when was
24 Q. Is Deanna J. Brown Thomas your client?	24 the first meeting?
25 A. To the best of my knowledge, yes.	25 A. Again, in a short period of time prior to/

1 reaming within a week or two prior to the filing
 2 of the suit.
 3 Q. Okay. So if the suit was filed on May
 4 18th -- we agree that it was filed on May 18,
 5 2010?
 6 A. That sounds right.
 7 Q. Okay. So this would have been after the
 8 first of May of 2010?
 9 A. Yes. I'd say early 2010 -- early May 2010.
 10 Q. Now, had you been dealing with Alan Madlin
 11 and Sonny Jones since March 2010 or earlier?
 12 A. I don't recall the date when I was first
 13 contacted by Alan and Sonny, but it would have
 14 been in about the time frame that you're
 15 describing.
 16 Q. Okay.
 17 A. So a month or two prior to the filing of the
 18 suit.
 19 Q. And is it fair to say that a month or two
 20 prior to the filing of the suit, you had actually
 21 begun to draft the complaint?
 22 A. I don't recall.
 23 Q. If Alan Madlin told someone that you had
 24 already worked on the complaint from paragraph A
 25 to paragraph double B, or something to that

1 Henry McInerney
 2 A. I do not recall.
 3 D. Okay. Who else was at the meeting with you
 4 and Sonny Jones?
 5 A. We were in the conference room in the AG's
 6 office right outside of Henry's -- or right
 7 adjoining Henry's personal office. And Henry sat
 8 at the head of the table. I was seated to his
 9 left. Matt Kendall was seated next to me on my
 10 left. I believe that Alan Madlin was seated on
 11 Matt's left.
 12 On the other side of the table, as I recall,
 13 was McIntosh, John McIntosh with the AG's office,
 14 Sonny Jones with the AG's office, and Mary
 15 Francis Jowers with the AG's office, as I recall.
 16 Q. Now, Ma, I think you are speaking to me
 17 about a meeting that took place in May of 2010;
 18 is that correct?
 19 A. That sounds right.
 20 D. Okay. I want to back up, if I could for a
 21 moment, to your first meeting or meetings with
 22 Sonny and Alan Madlin. When was your first
 23 meeting or what can you remember at all, if
 24 anything, about your first meeting with Alan
 25 Madlin and Sonny Jones?

1 effect, would you have any reason to think that
 2 was an incorrect statement in March of 2013?
 3 MR. NEWSOME: Object to the form of the
 4 question.
 5 MR. ROUSER: Object to the form; it's
 6 pitting.
 7 THE WITNESS: I'm sorry. Repeat the
 8 question.
 9 MS. POPE: Can you ...
 10 THE COURT REPORTER: "If Alan Madlin
 11 told someone that you had already worked on
 12 the complaint from paragraph A to paragraph
 13 double B, or something to that effect, would
 14 you have any reason to think that was an
 15 incorrect statement in March of 2013?"
 16 MR. ROUSER: Same objection.
 17 MR. NEWSOME: Same objection.
 18 A. I have -- I have no specific recollection of
 19 that time frame and I certainly have no idea what
 20 Alan Madlin may have told somebody.
 21 Q. Did you begin working on the complaint in
 22 the Wingate Suit as early as March of 2013?
 23 A. I do not recall.
 24 B. Did you begin working on the complaint in
 25 the Wingate Suit before your first meeting with

1 A. I don't recall specifics because there were
 2 a number of such conversations or meetings.
 3 C. Okay. So before you met with the Attorney
 4 General --
 5 THE WITNESS: Let's pause one second.
 6 (Off the Record)
 7 MS. POPE: I'll just start over since
 8 we had a little --
 9 MR. ROUSER: Sorry about that.
 10 MS. POPE: -- discussion. No, no,
 11 that's fine.
 12 BY MS. POPE:
 13 Q. I want to go back and see what you can
 14 remember of any of your meetings with Sonny Jones
 15 and Alan Madlin before you met with Attorney
 16 General McInerney.
 17 A. Okay.
 18 Q. Anything you can recall about any meetings,
 19 any conversations with them?
 20 A. Again, all I recall is that there were
 21 several. I can recall at least one that took
 22 place at my office with at least Alan and Sonny.
 23 Don't remember if -- I think Mary Francis would
 24 have been involved. And then several phone
 25 conversations, as well.

Page 25

1 objection is to disclosure of
 2 attorney/client privileged matter related to
 3 a joint defense agreement.
 4 And he has also asserted that your
 5 question goes beyond the Order of Judge Toal
 6 and that Judge Toal has directed that
 7 Mr. Wingate and Mr. Kendall answer questions
 8 related to their authorization to represent
 9 certain parties in the lawsuit they have
 10 brought that has calendar number 1377.
 11 MR. NEWBERRY: That's correct. Thank
 12 you.
 13 MS. POPE: And based on that,
 14 Mr. Newberry, you are directing him to limit
 15 his answers?
 16 MR. NEWBERRY: I am.
 17 MS. POPE: Okay.
 18 BY MS. POPE:
 19 Q. Do you share today a joint interest
 20 privilege with Alan Madliff?
 21 A. Don't know.
 22 Q. You don't know? Okay. Do you share today a
 23 joint interest privilege with Louis Lewenson?
 24 A. Don't know.
 25 Q. Do you share today a joint interest

Page 26

1 privilege with the Attorney General of South
 2 Carolina?
 3 A. Those are issues you'll take up with the
 4 attorney who's handling this litigation:
 5 Mr. Kendall.
 6 Q. Are you responsible for this litigation,
 7 Mr. Wingate, the Wingate suit? Are you
 8 responsible for it?
 9 A. What do you mean "responsible"?
 10 Q. Are you -- were you the attorney who brought
 11 the Wingate lawsuit to the firm and undertook the
 12 representation of the Plaintiffs in the Wingate
 13 suit?
 14 A. No, I'm not.
 15 Q. Who is?
 16 A. I've already described for you that I was
 17 initially contacted about this representation and
 18 Mr. Kendall has been the one handling the
 19 litigation.
 20 Q. Did you not, Mr. Wingate, attend the very
 21 first hearing in this matter yourself?
 22 A. I've attended a number of hearings. I don't
 23 know what you're referring to as the very first
 24 hearing. I have attended hearings.
 25 Q. And at those hearings --

Page 27

1 A. Some hearings.
 2 Q. And did you not accept responsibility for
 3 the lawsuit when it was filed?
 4 A. I don't know what you mean by "accepting
 5 responsibility."
 6 Q. Okay. All right. It is your -- it is your
 7 representation that you today represent all the
 8 Plaintiffs in the Wingate lawsuit?
 9 A. To the best of my knowledge, yes.
 10 Q. And that you began to represent Attorney
 11 General Alan Wilson when he took office?
 12 A. After Henry's term ended and Alan Wilson
 13 became the Attorney General, yes.
 14 Q. It is -- it is your representation that you
 15 represent Russell Rednight on behalf of the
 16 Attorney General of South Carolina?
 17 A. Yes.
 18 Q. It is your representation that you were
 19 authorized by Henry McMaster to represent Russell
 20 Rednight on behalf of the Attorney General of
 21 South Carolina?
 22 A. I'm telling you that I met with the Attorney
 23 General, Henry McMaster, and he authorized this
 24 lawsuit to go forward.
 25 Q. Did he see the complaint to know who the

Page 28

1 Plaintiffs were?
 2 A. He knew who the Plaintiffs were.
 3 Q. Did he know Russell Rednight was bringing
 4 this lawsuit on behalf of the Attorney General of
 5 South Carolina?
 6 A. I discussed that with Henry McMaster, yes,
 7 I did.
 8 Q. Personally?
 9 A. Yes, personally.
 10 Q. Approximately when?
 11 A. I've already said a couple of times, within
 12 a few weeks prior to the filing of the lawsuit.
 13 Q. Okay. Did Mr. McMaster sign the contract
 14 with the Wingate law firm?
 15 A. Henry McMaster signed a letter -- and if you
 16 want to parse through it, let's put it in front
 17 of us -- authorizing the suit to go forward.
 18 Q. Did Henry McMaster sign the contract with
 19 the Wingate law firm?
 20 A. I've said, Henry signed a letter authorizing
 21 the suit to go forward with our firm representing
 22 the Plaintiffs.
 23 Q. Mr. Wingate, did you at first draft a
 24 contract for Mr. Wingate (sic) to sign as
 25 Attorney General and he did not sign it?

Page 29

1 MR. HONSER: Wait a minute. You
2 misstated.
3 MS. POPE: I'm sorry. Thank you.
4 MR. HONSER: You used --
5 MS. POPE: I'll restate it. Thank you.
6 MR. HONSER: You used his name twice.
7 MS. POPE: I -- thank you.
8 BY MS. POPE:
9 Q. Did you at first draft a contract for Henry
10 McMaster to sign as Attorney General and he did
11 not sign it?
12 A. No, I did not draft such a document.
13 Q. Did you at first propose that Henry
14 McMaster, as Attorney General, would be a
15 signatory on the contract with your firm?
16 A. I did not propose that.
17 Q. Do you know if anyone else did?
18 A. No, I do not know if anyone else did.
19 Q. Okay. Do you know whether or not that
20 proposal was rejected?
21 A. No, I do not know.
22 Q. Okay. All right. Do you have a joint -- an
23 attorney/client relationship or a joint defense
24 privilege with David Bell, Esquire?
25 A. Those would be details that others in the

Page 31

1 signature of Alan's.
2 Q. He actually verified Attorney General
3 McMaster's interrogatory answers, didn't he?
4 A. I don't know. I didn't handle that, I told
5 you.
6 Q. So you -- you've seen his signature. You
7 don't know the circumstances; is that correct?
8 A. Correct.
9 Q. Okay. All right. Let me ask you about your
10 client, the James Brown Legacy Trust. Does it
11 exist?
12 A. I'm not handling that part of the
13 litigation. I'm not going to pursue with you the
14 kind of question you're angling toward. I have
15 no idea.
16 Q. Mr. Wingate, I'm here to get your answers,
17 not to pursue with you. Do you know whether the
18 Wingate -- whether the James Brown Legacy Trust
19 exists at this time?
20 A. I'm not handling that part of the
21 litigation.
22 Q. You're not responding to my answer (sic).
23 MR. HONSER: The answer is: He doesn't
24 know. Isn't that what you --
25 MS. POPE: Mr. Honsler, this is ...

Page 30

1 litigation in my firm have handled.
2 Q. Do you know?
3 A. I do not know.
4 Q. Do you know whether you've ever had a joint
5 privilege -- a joint interest agreement with
6 David Bell?
7 A. I do not know.
8 Q. Okay. Do you know whether any documents
9 exist which confirm or deny any joint interest
10 privilege --
11 A. I do not know.
12 Q. -- with any person?
13 A. I do not know.
14 Q. Okay. Do you have any documentation to
15 confirm that Attorney General Alan Wilson became
16 a client of the Wingate firm when he took office
17 in January 2011?
18 A. I do recall that after he became the
19 Attorney General, he signed a verification of the
20 complaint -- or of responses -- I don't know if
21 it was on discovery responses or on -- on the
22 pleadings, but he actually personally signed a
23 verification. And, again, I was not the one
24 directly involved in the discussions about it,
25 the preparation of it, but I have seen a

Page 32

1 MR. HONSER: Okay. Go ahead.
2 BY MS. POPE:
3 Q. Does the James -- to your knowledge, does
4 the James Brown Legacy Trust exist at this time?
5 A. I do not know.
6 Q. Okay. Do you know who the -- the the
7 principals of the James Brown Legacy Trust are?
8 A. Do not know.
9 Q. Do you know who the principals of the James
10 Brown Legacy Trust were when you brought the
11 Wingate Suit?
12 A. I do not know.
13 Q. Okay. Do you know whether Bob Richmond and
14 Adale Pope ever owed any duty to the
15 Wingate -- to the James Brown Legacy Trust?
16 A. Again, those are things that I have not been
17 directly involved in, so my answer is: I do not
18 know.
19 Q. Did you have any change in the
20 attorney/client relationship with Daryl Brown
21 after Daryl Brown fired Louis Lawson?
22 A. I do not know.
23 Q. Did you allow those lawyers to sign the
24 Wingate litigation agreement on behalf of
25 approximately a dozen clients when you had never

Exhibit 2

93404

RECEIVED
OCT 14 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2020-000967

Adele J. Pope..... Appellant

v.

Estate of James Brown and
The James Brown 2000 Irrevocable Trust..... Respondents

MOTION TO SUPPLEMENT THE RECORD BASED ON
ATTORNEY GENERAL'S OCTOBER 2020 PUBLIC RELEASE OF
DOCUMENTS BEARING ON CRITICAL ISSUES IN THIS APPEAL

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES:

Appellant moves this Honorable Court to supplement the record on appeal (ROA) in this matter with stunning documents released under FOIA by the Attorney General of South Carolina ("AG") for the first time in October 2020. The AG's October 2020 documents directly impact both the Due Process issues related to appealability of the orders which are the subject of this appeal, and their merits.

In the alternative, Appellant respectfully requests that the Court take judicial notice of the AG's October 2020 documents and their relationship to the claims which Respondents, through the law firm of Sweeny, Wingate & Barrow, P.A. [SWB] have made to this Court since 2016, and to other courts since April 24, 2013.

The grounds of this motion are that the public admissions of the Attorney General in the October 2020 documents confirm that in April 2013 SWB, a private law firm which has been suing Robert Buchanan, Jr. and Appellant in Richland County Case 2010-CP-40-4900 ("Richland 4900") on behalf of the AG, Tommie Rae Hynie, and other "Beneficiary Plaintiffs" of the James Brown Legacy Trust ("Legacy Trust") received unequivocal confirmation from the AG, through Chief Deputy AG John McIntosh, that the AG had never been a client of SWB and that SWB had no authority whatsoever to act on behalf of the State/AG in Richland 4900.

Respondents and SWB were both keenly aware before the Supreme Court's final decision in *Wilson v. Dallas* that SWB had no authority to speak for the State/AG in Richland 4900. Yet, for the seven years since *Wilson v. Dallas*, SWB and Respondents have concealed this information while using the power and prestige of the Office of the Attorney General to pursue Richland 4900 for the benefit of Hynie and those aligned with Hynie.

These AG's October 2020 admissions were the subject of proper FOIA requests made between 2011 and 2014, and were also properly sought from Respondents in discovery in both Richland 4900 and Aiken County Case 2013-CP-02-1337 ("Aiken 1337"), from which this appeal stems. Yet these documents were never disclosed either by Respondents or the AG. The AG's documents make clear that the AG and those purporting to act for the AG have violated the Due Process, First Amendment and other rights of Buchanan and Appellant for a decade, including in Richland 4900, Aiken 1337, and two FOIA cases the AG and Respondents moved from Newberry County to Richland County and attempted to consolidate with Richland 4900, one of which was consolidated.

The Nonpayment Orders which are the subject of this appeal make the sixth appeal now turned on its heels by the AG's and Respondents' extraordinary documents, produced after seven years or more of nondisclosure.

This motion is supported by, and the Court is asked to take judicial notice of, every action taken by the AG and Respondents since April 24, 2013 in Richland 4900, Aiken 1337, Appellant's two FOIA cases, and the six appeals from these cases, including 2016-001708, 2016-001727, 2017-001899, 2018-002229. The motion to supplement is also supported by the documents attached hereto, and by the memorandum which follows.

MEMORANDUM IN SUPPORT OF SUPPLEMENTING RECORD ON APPEAL

Background

This appeal, filed June 30, 2020, seeks to reverse on Due Process and others grounds, two 2020 post-trial "Nonpayment Orders" of the Circuit Court in Aiken 1337. The Nonpayment Orders enjoin the payment to Appellant of \$47,972, plus interest at 8 3/4%, compounded annually, since March 8, 2008. The \$47,972 is Appellant's unpaid portion of the \$317,000 special administrator (SA) fee awarded Robert Buchanan, Jr. and Appellant for their joint SA service to the estate of entertainer James Brown in 2007. Buchanan's entire share of the 2007 SA fee pursuant to the first "Payment Order" of the Honorable Doyet A. Early, III issued in March 2008, was paid in 2008 and "double approved" by Judge Early in a *Wilson v. Dallas* remand hearing in 2013.

The Nonpayment Orders direct that Appellant's undisputed, unpaid share of the same SA fee received by Buchanan more than a decade ago be withheld until the conclusion of Richland 4900, which may be a decade from now. The Nonpayment Order does so despite the fact that the \$47,972 was awarded to Appellant by Judge Early in a second 2017 summary judgment order in Aiken 1337 and the final Aiken 1337 order in January 2019 for which Respondents did not seek

reconsideration. The Nonpayment Orders support the injunction by adopting Respondents' incorrect claim that Richland 4900 is a "companion case" to Aiken 1337. The AG's October 2020 documents confirm that the cases are not companion cases, and never were.

Richland 4900 is a 2010 tort suit brought by the AG, through SWB, and also brought by Hynie and Russell Bauknight, as trustee of the Legacy Trust and in other capacities. Bauknight, for a decade, has acted "on behalf of" both the AG and Hynie, in Richland 4900. Richland 4900 seeks to damage Buchanan and Appellant for appealing the AG's 2008 settlement which dismembered James Brown's estate plan. Aiken 1337, by contrast, was about whether Appellant, like Buchanan, should be paid under her contract with Respondents for her partial PR/Trustee commission earned through May 26, 2009, with interest, as directed by Judge Early, and for the out-of-pocket costs she bore in the *Wilson v. Dallas* appeal from 2009 until 2013.

Actions of Respondents, SWB and Hynie Before the AG's October 2020 Documents

On August 7, 2020 Respondents, through Bauknight, served a Motion to Dismiss this appeal as interlocutory. Appellant opposed the motion on Due Process and other grounds, and her return is incorporated herein.

On September 9, 2020, Respondents filed a Reply in Support of Motion to Dismiss Appeal as Interlocutory, which stated in part:

Instead of attempting to counter Respondents' arguments for dismissal, Appellant used the Return as a vehicle for a rambling, counter-factual screed against Tommie Rae Hynie...and, to a lesser extent, the breach of fiduciary duty case..."Richland 4900"... While Respondents cannot rule out the possibility that some of Appellant's rantings may be relevant to the merits of this appeal, it is clear that none of them is relevant to the threshold issue of appealability...

The AG's October 2020 documents make clear that the "rantings" and claimed "counter-factual screed" of Appellant were actually a brief summary of the efforts of SWB, Respondents, Hynie and the small number of people who remain aligned with Hynie since May 29, 2013 to convert Richland 4900 into a "breach of fiduciary" case against Robert Buchanan and Appellant when it was exactly the opposite. As the never-amended complaint in Richland 4900, on file in 2017-001899 and 2018-002229, and the subject of two FOIA cases decided by this Court in 2019 shows, the purpose of Richland 4900 when filed was to stop an appeal of the AG's 2008 settlement.

The AG's 2008 settlement "stipulated" that Hynie was Brown's wife, then gave her a quarter of James Brown's worldwide music empire in exchange for her nonexistent termination rights under the Copyright Act and those of her minor son (James). Richland 4900 was concocted to blame the damage Hynie and the AG had caused Brown's charity on Buchanan and Appellant.

Respondents, Hynie and SWB were unfazed by *Wilson v. Dallas*. Within two days of the decision *Bauknight* had been reinstated, and on May 29, 2013, a day or so after the remittitur was handed down, Hynie's attorney Alan Medlin, Esq., with Louis Levenson, Esq., announced to Judge Early their intention to disregard *Wilson v. Dallas*; and reinstate the AG's 2008 settlement.

With unmistakable evidence that they had no authority to do so, Hynie, SWB and Respondents forged on in Richland 4900, continuing to blame the dismembering on Buchanan and Appellant. For seven years Hynie and the few who remain aligned with her, including Respondents, have turned Richland 4900 into a FOIA graveyard; sought sanctions against Appellant a dozen times; stricken from the record affidavits of Appellant which were never reviewed by any court; and managed to suppress both facts and law which show that Hynie was not James Brown's spouse, it was never a help to Brown's charity to make Hynie appear to be

James Brown's spouse and Brown's worldwide music empire was not worth \$4.7 million as Peter Afterman, Hynie and Bauknight claim.

In the name of the State's highest legal officer, SWB, Hynie and Respondents have continued to falsely accuse Buchanan and Appellant of the federal felony of overstating Brown's music empire by \$79 million in IRS filings to get a \$5 million commission on a \$5 million estate. And they have done this with knowledge that they had no right to use the power and prestige of the Office of the Attorney General to attempt to ruin the careers and reputations of Buchanan and Appellant.

In 2016 now-Governor McMaster testified emphatically under oath that he did not authorize SWB to bring Richland 4900; that he did not authorize Bauknight to act for the AG in Richland 4900; and that he did not even know he was a Richland 4900 Plaintiff until after leaving office as AG in January 2011. Instead of ending Richland 4900, Hynie, SWB and Respondents redoubled their efforts to damage and further discredit both Buchanan and Appellant for their proper joint actions.

By 2017 all of the Richland 4900 Plaintiffs except Hynie, her son, and Respondents had abandoned the May 29, 2013 plan and terminated Levenson. Even that did not stop SWB, Hynie and Respondents. They engaged Levenson as a "fact witness" in Aiken 1337 to testify that Buchanan and Pope should not have appealed the AG's 2008 settlement

Claiming to have the AG on their side in Richland 4900, and claiming that SWB was the AG's attorney until at least 2016, Respondents, with SWB, repressed the Governor's sworn testimony in Aiken 1337, as well as the testimony of AG Wilson and other AG staff.

Using 4 lawyers who charged \$375- \$500 an hour, Respondents, by Bauknight's testimony, spent more than \$1 million defending a fee claim case which had been resolved for Buchanan with a 15-minute hearing and which Appellant was pursuing *pro se* before the 2017 trial in Aiken 1337.

Declining to respond to Appellant's offer to settle her claim for 5 ½ years service and all the costs Appellant had paid out of pocket for the 4-year appeal which became *Wilson v. Dallas* for \$2.1 million, Respondents conducted a lengthy trial with two attorneys, a \$600-an-hour termination rights expert from New York who was told that Hynie was Brown's spouse; a \$700-an-hour expert appraiser from California who did not appraise anything; and five other experts, including two CPAs who were not told that Bauknight and his spouse/CPA had abandoned the tax file of court-appointed CPA William Sellars, allowing it to be destroyed after more than six years.

By 2019 at a cost which was set out in an *ex parte* filing by Respondents, but discarded by the circuit court, and after accusing Appellant of perjury and wanting \$19 million to settle her claim, Respondents secured the circuit court order they wanted. It is the subject of Court of Appeal Case No. 2019-000362. That harsh order, which asserts that Buchanan and Appellant breached their fiduciary duty by appealing the AG's 2008 settlement, nevertheless directs that the \$47,972 SA fee be paid to Appellant with legal interest from March 2008.

Instead of paying Appellant the \$47,972 with interest, now over \$100,000, Respondents continued to employ the power and prestige of the AG's office by asserting that they could not pay Appellant until Richland 4900, a "fiduciary duty" case and a "companion case" to Aiken 1337 was concluded.

By September 2020 Respondents' "expert" Peter Afterman, who had fabricated the \$4.7 million claimed value for Brown's worldwide music empire used to accuse Buchanan and Appellant of a federal felony, had both repudiated his \$4.7 million claim in Supreme Court filings

and confirmed in a Federal Court sworn declaration that he had been working for Hynie and her lawyers since 2013. **Exhibit A.**

Undaunted, on September 18, 2020 Respondents and Hynie, through SWB, filed a motion to strike and sought a rule to show cause in Case No. 2018-002229, a Richland 4900 appeal. Respondents, Hynie, and Bauknight “on behalf of” both Hynie and the AG, asked this Court to hold Appellant in contempt for alleged “repeated rule violations,” and stated that Appellant “has a documented history ...of failure to comply with appellate court rules.” The SWB filing continued the vitriolic tone SWB and Bauknight have taken for the State/AG for a decade.

Documents Released by the Attorney General Under FOIA in October 2020

In October 2020 the AG released under FOIA, for the first time, public documents which disclose startling facts about Richland 4900 which bear directly on this appeal. The AG’s October 2020 documents directly refute Respondents’ claim to the lower court and in this appeal that the unauthorized, unconstitutional Richland 4900 is a “companion case” to Aiken 1337. The AG’s October 2020 documents, when taken in context, reveal how Respondents, Hynie and SWB, for more than seven years, have used the power of the Office of the Attorney General to advance the May 29, 2013 announced plan of Hynie and Levenson to disregard the Supreme Court’s decision in *Wilson v. Dallas* and reinstate the AG’s 2008 settlement which stipulated that Hynie was Brown’s spouse and gave her about \$1 million a year and a third of Brown’s charity.

The AG’s October 2020 documents show:

1. January 20, 2012 letter from SWB attorney Mark V. Gende to AG Wilson (“As [the AG’s] attorney in this matter, [Gende is] writing to advise [the AG] against releasing” any portion of the public “Wingate Contract” which Appellant has been seeking under FOIA for 9 years, and Buchanan and Appellant were also seeking in Richland 4900 discovery. Attached as **Exhibit B.**
2. March 25, 2013 letter from SWB attorney Everett A. Kendall, II, to AG Wilson, Chief Deputy AG John W. McIntosh, Deputy Attorney General Robert D. Cook and Asst.

Deputy AG C. Havird Jones. (requesting "formal meeting" "to discuss the termination of [SWB's] representation of the Office of the Attorney General" in Richland 4900). Attached as **Exhibit C**.

3. April 12, 2013 letter of Mr. Kendall to AG Wilson, Mr. McIntosh, Mr. Cook and Mr. Jones. (Transmitting "Termination Agreement to end Sweeny, Wingate and Barrow, P.A.'s representation of the Attorney General.") Attached as **Exhibit D**.

4. Unsigned April 2013 "Termination of Legal Representation," asserting that the Contract for Legal Services (Wingate Contract) created "a direct attorney-client relationship" between SWB and the AG; indicating that the AG would pay some portion of SWB's fees; and asserting that all communications between SWB and the AG, as well as communications between the AG and others, and the Termination document itself, "are, and shall remain, confidential and protected by the Attorney-Client Privilege." Attached as **Exhibit E**.

5. April 23, 2013 letter of Mr. Kendall to Chief Deputy AG Mr. McIntosh. (Seeking signature on Termination agreement; noting that the AG had "drawn a line in the sand with respect to [SWB's] attorney fees and expenses;" and saying that SWB would "act accordingly." Attached as **Exhibit F**.

6. April 24, 2013 letter of Chief Deputy AG McIntosh to Mr. Kendall. (Noting that the AG would not pay SWB's fees because it "did not employ [SWB's] services" and advising that "the Office of the Attorney General has never been a client of [SWB]." Attached as **Exhibit G**.

7. A January 5, 2011 letter from Mr. Kendall to Russell Bauknight, regarding Richland 4900 with the entire 3 ½ page body and attached chart redacted, but showing copies sent to two members of the AG's office, as well as attorneys for Hynie, and other Will/Trust contestants.. This letter was sent the month AG Wilson took office; Forlando Brown became an undisclosed owner of the Legacy Trust and planted the false Grammy© claim noted by the Supreme Court two years later; and the month Bauknight shifted nearly 1/3 of Brown's charity and about \$1 million a year from Brown's charity to a trust for Forlando and others by use of the Afterman \$4.7 Million Value. Attached as **Exhibit H**.

8. A 2008 Fee Schedule of Bauknight which was filed with Judge Early in 2009; declared public by Judge Early in 2010; has been missing from the Aiken Clerk's Office since 2010 when it was ordered to be delivered to Buchanan and Appellant; was not produced by Respondents in either Aiken 1337 or Richland 4900 despite proper discovery requests; and shows that the dozen Nexsen Pruet (NP) attorneys hired by Bauknight in 2009 to assist the Legacy Trust and Hynie with the dismembering of James Brown's estate plan were charging \$375- \$500 an hour in 2008. Attached as **Exhibit I**

Consideration of the AG's 2020 Documents Will Promote Justice and Judicial Economy

The full impact of these extraordinary 2020 admissions by the AG cannot be underestimated. In 2011 Buchanan and Appellant asked this Court to grant a Writ of Prohibition and early appeal to consider the constitutionality of Richland 4900, where SWB, a private law firm, served as sole counsel of record to the State/AG, Hynie and other private clients. The AG, through SWB, asked that the appeal be dismissed as premature, and it was.

In the nine years which followed the AG and Bauknight, both claiming to speak for the AG, trampled on the Due Process, First Amendment and FOIA rights of Appellant and Buchanan. One small example is **Exhibit J**, an order obtained by the AG, through SWB, in March 2017. This extraordinary order seals an affidavit of Appellant without review and directs that all further affidavits of Appellant – but not anyone else – in Richland 4900 be filed under seal.

While it may take years to sort out the implications of the AG's October 2020 documents, it is clear that they show that Richland 4900 is not – and never was – a companion case to Aiken 1337. The only claimed “fiduciary duty” in Richland 4900 is to Hynie and owners of the nonexistent Legacy Trust created by the AG, Hynie and others as the vehicle to dismember James Brown's estate plan. Buchanan and Pope never owed a duty to the Legacy Trust or its beneficiary-owners.

If Respondents do not immediately abandon their positions and deliver to Appellant the funds she was awarded in 2008 for her 2007 SA service, these documents should become part of the record in this appeal.

Appellant's Request to Supplement the ROA is Appropriate

“Few appeals involve the need for a supplemental record.” Toal, Walker, Baker, *Appellate Practice in SC*, 3d ed., p. 417. This case, with the just-disclosed documents which bear directly

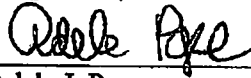
on the constitutional issue of whether SWB and Respondents have inappropriately used the power and prestige of the Office of the AG to advance Hynie's private interests in Richland 4900, and have continued those Due Process violations with the Nonpayment Orders which are the subject of this appeal, is one of those few cases where a supplement should be allowed. Although presentation of evidence for the first time on appeal is unusual, appellate courts have the discretion "to make limited exceptions to this rule when 'injustice might otherwise result.'" *In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Appellate courts have "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice." *CSX Transp. Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000). That is the case here.

The Court of Appeals has already issued one opinion in Richland 4900, in Case No. 2017-001899, without benefit of the compelling public evidence revealed by the Attorney General in October 2020. The AG's October 2020 documents are critical to a prompt and just conclusion in this appeal so that Appellant may be paid the \$47,972, with interest, she should have been paid 12 years and 8 months ago. It may also deter Respondents from continuing expensive litigation to avoid embarrassment, as was proposed by SWB to the AG in 2012, and which has happened.

CONCLUSION

Based on the foregoing, this Court should allow the extraordinary October 2020 documents of the AG and the related documents attached hereto to be considered both in connection with the Motion to Dismiss Appeal as Interlocutory and as part of the Record on Appeal when presented if Respondents continue to withhold Appellant's \$47,972 unpaid SA fee from 2007.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: (803) 413-0753
adele@popelawfirm.com
S.C. Bar No. 4501

October 14, 2020

Appellant pro se

Exhibit A

EXHIBIT F

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

DEANNA BROWN-THOMAS, an individual;)
YAMMA BROWN, an individual; VENISHA)
BROWN, an individual; MICHAEL D. BROWN, an)
Individual; NICOLE C. BROWN, an individual;)
JEANETTE MITCHELL BELLINGER, an)
Individual; SARAH LATONYA FEGAN, an)
Individual; CIARA PETTIT, an individual; and)
CHERQUARIUS WILLIAMS, an individual,)

Civil Action No. 1:18-cv-02191-JMC

**DECLARATION OF PETER
AFTERMAN**

Plaintiffs,

v.

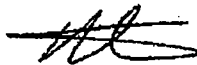
TOMMIE RAE HYNIE, a.k.a. TOMMIE RAE)
BROWN, an individual; JAMES J. BROWN, II, an)
Individual; RUSSELL L. BAUKNIGHT, as the)
Personal Representative of the Estate of James Brown)
And Trustee of The James Brown "I Feel Good" Trust;)
DAVID C. SOJOURNER, JR., as the Limited Special)
Administrator of the Estate of James Brown and)
Limited Special Trustee of The James Brown and)
Limited Special Trustee of The James Brown "I Feel)
Good" Trust; and DOES 1 through 10, inclusive,)

Defendants.

I, Peter Afterman, declare as follows:

1. I have personal knowledge of the facts herein and if called as a witness would so testify.
2. As of 2013, I have assisted Tommie Rae Brown and her counsel with advice as to music rights matters, including copyright matters and termination right matters. My assistance as an agent involved helping her counsel provide her with their legal advice about music, copyright, and termination matters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this Declaration on this 2nd day of September, 2020, at Los Angeles, California.



Peter Afterman

Exhibit B

RECEIVED

S.W.B

JAN 20 2012

S.C. Attorney General's Office WINGATE & BARROW P.A. Civil Section

Referred to Victoria Cook
Answered: [Signature]
[Signature] T. Meyers

January 20, 2012

JAN 23 2012

Received by: _____
Reviewed by/Date: _____
Referred to/Date: _____
Notes: _____

Region's Main Office
Mark V. Gende
(803) 251-2233 x151
mvg@scbar.org

URGENT - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY

Ailar Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Balkright, et al. v. Adela I. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants' claims to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

Main Office T: 803-251-2233 F: 803-251-2237 1515 Laurel St. (2000) Post Office Box 11549 Columbia, SC 29211
P.O. Box Office T: 803-251-2233 F: 803-251-2237 115 Canal Way, Suite B Post Office Box 68 Hartsville, SC 29551

January 20, 2012
Page 2 of 2

both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

Exhibit C

SW&B

SWEENEY WINGATE & BARROW P.A.

March 25, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
ek@swblaw.com

Via Hand-Delivery

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Harold Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

**S.C. Attorney General's Office
Civil Section**

MAR 25 2013

Received by: _____
Reviewed by/Date: _____
Referred to/Date: _____
Notes: _____

RE: **URGENT MEETING REQUEST**
Our File: 4077-7389

Dear Attorney General:

On several occasions over the last week, Ken Wingate has made a verbal request for a meeting with you and other attorneys in your office. To date, we have only gotten verbal assurances that such a meeting will occur, but with no specific date and time provided.

This is a formal request for a meeting with you and the other attorneys in your office. The purpose of the meeting is to discuss the termination of our representation of the Office of the Attorney General. Given the recent statements of your office contained in filings with the South Carolina Supreme Court and the Circuit Court for Richland County, as well as statements made to the press and in our conversations, this meeting is of the utmost importance and urgency.

Please confirm a time when we can meet on Tuesday, March 26, 2013 or Wednesday, March 27, 2013.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

MAIN OFFICE: Tel: 803-217-3447 FAX: 803-217-3447 1545 Lady St., 12th Floor, RICHMOND OFFICE: Box 10020, COLUMBIA, SC, 29211
RICHMOND OFFICE: Tel: 803-217-3447 FAX: 803-217-3447 1125 Canal Way, Sumter Post Office Box 882000, SUMTER, SC 29152

Exhibit D

S·W·B

SWEENEY WINGATE & BARROW P.A.

April 12, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Havird Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

RE: Proposed Termination of Representation Agreement
Our File: 4077-7389

Dear Attorney General:

In follow up to our meeting of March 27, 2013, I have drafted the enclosed Termination Agreement to end Sweeney, Wingate and Barrow, P.A.'s representation of the Attorney General in all matters. We would be happy to have further discussions about the particulars, but this draft covers the main issues of concern.

Also, we left with you a Consent Order relieving our firm as counsel in the 4900 case. I would like to submit that to Judge Manning as soon as possible to avoid any confusion in upcoming proceedings, especially in light of your having filed a Motion to be dropped from the lawsuit.

If further discussion is needed, please do not hesitate to call.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Everett A. Kendall, II

RECEIVED

APR 15 2013

MAIN OFFICE: T• 803-256-2233 F• 803-256-9177 1515 LADY ST. (19201) • POST OFFICE BOX 12140 • COLUMBIA, SC 29211
PER DEE OFFICE: T• 843-878-0390 F• 843-878-0393 115 CARROLL WAY • SUITE B • POST OFFICE BOX 66 • HARTSVILLE, SC 29056
Answered *McIntosh / dm*
C: Bobt. Schuler

Exhibit E

TERMINATION OF LEGAL REPRESENTATION

This Agreement as to the termination of legal representation (hereinafter "Termination Agreement") by the law firm of Sweeny, Wingate & Barrow, P.A. (hereinafter "the Firm") and the Attorney General for the State of South Carolina (hereinafter "the Attorney General") is entered this _____ of April, 2013 and is effective retroactively to March 25, 2013.

Whereas, the Firm and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee") entered into an Agreement for Legal Services (hereinafter "Engagement") on or about May 18, 2010; and

Whereas, the Attorney General ratified and accepted the terms of the Engagement on about May 18, 2010, thereby creating a direct attorney-client relationship; and

Whereas, since that time, the Firm has provided valuable legal services to and on behalf of the Attorney General; and

Whereas, the Attorney General does now wish to terminate its engagement with the Firm, without cause;

IT IS THEREFORE AGREED AS FOLLOWS:

The Engagement of the Firm in all matters relating to the Estate of James Brown, is hereby terminated, without cause. Specifically, but without limitation, the Firm is relieved of all obligations arising from the Engagement. To the extent that the Firm has provided legal services and/or representation beyond that which is specifically described in the Engagement, representation on those issues is also hereby terminated without cause. Effective retroactively to March 25, 2013, Sweeny, Wingate & Barrow, P.A. shall have no obligation to the Attorney General in any legal matter.

It is the understanding of the Firm that the Attorney General wishes to withdraw as a party-plaintiff from Bauknight, et al. v. Pope, Case No. 2010-CP-40-4900 (hereinafter "Case 4900"). The Office of the Attorney General will handle all matters necessary to effect that objective. The Firm shall have no responsibility to assist the Attorney General in this process.

The Attorney General further acknowledges that the Firm has provided valuable services to the Office of the Attorney General since May 18, 2010. For these services, the Attorney General agrees to pay the expenses and legal fees incurred on a *quantum meruit* basis, totaling _____ . Payment shall be made within 30 days of this agreement. The payment of these fees shall be credited to the remaining parties to the Agreement.

The Attorney General and the Firm warrant that all communications between them, as well as those among other parties to the Engagement are, and shall remain, confidential and protected by the Attorney-Client Privilege. Neither the Firm nor the Office of the Attorney

General shall disclose such communications to any person not party to the Agreement without the written consent of every party or an order of the Court. This document is included among the confidential communications.

The Office of the Attorney General shall refrain from making any disparaging remarks regarding Sweeny, Wingate & Barrow, P.A. Any reference to the termination of this relationship shall simply be described as arising out of the decision of the Attorney General to withdraw from Case 4900 and that the Firm's legal services are no longer required.

IN WITNESS WHEREOF, we have hereunto set our hand and seal at the County of Richland, State of South Carolina, this ____ day of _____, 2013.

Alan Wilson, Attorney General
State of South Carolina

Kenneth B. Wingate, Esquire
Sweeny, Wingate & Barrow, P.A.

Exhibit F

SWB

SWEENEY WINGATE & BARROW P.A.

April 23, 2013

Reply to: Main Office
Everett A. Kendall, II
1801 256-2233 x 130
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

John W. McIntosh
Chief Deputy Attorney General
Office of the Attorney General
P.O. Box 111549
Columbia, SC 29211

RECEIVED

APR 24 2013

Referred to McIntosh/B. Jones
Answered Cook ds

RE: Russell L. Barknigh, et al. v. Adele I. Pope
Civil Action No. 2010-CV-40-04906
Our File# 4077-7389

Dear Mr. McIntosh:

I am in receipt of your letter of April 18, 2013, wherein you purport to respond to my letter of April 12, 2013. However, my letter did not request that the Attorney General withdraw from the 4900 case. That motion was made by the Attorney General's office on its own accord. I have made no recommendation on that subject. Rather, the purpose of my letter was to request that you sign a Termination of Legal Representation Agreement, and execute a Consent Order allowing us to withdraw as counsel for the Attorney General in the 4900 case.

I understand that you have now drawn a line in the sand with respect to our attorney fees and expenses. We will act accordingly.

I would appreciate a response from you with either signatures on the documents I have provided, an invitation to further discuss those documents, or an explicit statement that you will neither sign them nor discuss them further.

I remain,

Yours truly,

SWEENEY WINGATE & BARROW P.A.

Everett A. Kendall, II

EAK/ber

Main Office Tel: 803-256-2233 Fax: 803-256-0172 1515 Lady St. (2nd floor) Post Office Box 11224 Columbia, SC 29211
Per Diem Office Tel: 803-577-8339 Fax: 803-577-0307 112 Congress Way Suite 200 Post Office Box 8841 Charleston, SC 29405

Exhibit G



ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Bankright et al. v. Adele J. Pope
Civil Action No. 2010-CP-40-04900
Your File # 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication." Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/ds

SCANNED

Exhibit H

S·W·B

SWEENEY WINGATE & BARROW P.A.

January 5, 2011

Reply to: Main Office

Everett A. Kendall, II
(803) 256-2233 x 139
enk@swblaw.com

Via Email

Russell L. Bauknight, CPA
Bauknight, Pietras & Stormer, P.A.
Post Office Box 1330
1517 Gervais Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-GC-40-00073
Claim No.:
Our File: 4077-7389

Dear Russell:



MAIN OFFICE T•803-256-2233 F•803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PICKENS OFFICE T•843-383-2146 F•843-383-6150 323 WEST HOME AVE. • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 1 [REDACTED]
- 2 [REDACTED]
- 3 [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] he is
[REDACTED]

Russell L. Bauknight, CPA
1/5/2011
PAGE 4

[REDACTED]

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Everett A. Kendall, II

cc: David B. Bell, Esquire
J. David Black, Esquire, Nexsen Pruet, LLC
C. Havird Jones, Jr., Esquire, Office of the Attorney General
Lori J. Christman, Levenson & Associates
Mary Frances Jowers, Esquire, Office of the Attorney General
Matt D. Bodman, Esquire, Matt Bodman, P.A.
Fred L. Kingsmore, Jr., Esquire, Nexsen Pruet, LLC
S. Alan Medlin, Esquire



Exhibit I

**Schedule of Compensation
For the Service of
Russell L. Banknight, as Fiduciary**

Effective January 1, 2008, compensation for Russell L. Banknight's services as sole or co-trustee of a testamentary or inter vivos (revocable or irrevocable) trust will be determined in accordance with the following schedule:

Trust administration, including investment and non-investment management of the assets in the trust, in compliance with any governing terms of the trust itself or, in default thereof, any governing state law.

Current Market Value Of Trust Assets	Annual Compensation Rate
First \$1,000,000	1.25%
Next \$1,000,000	1.00%
Next \$3,000,000 .....	.70%
Over \$5,000,000 .....	.50%

Fees are calculated and paid at of the end of each month based upon values at the first of the month. One-twelfth of the annual fee is due and payable each month.

Principal distributions and payments	1.00%
(e.g., discretionary, directed, withdrawal, removal, termination)	

Sale of Trust Real Estate:

Trustee markets and sell the property	7.00%
Trustee markets and broker procures purchaser	5.00%
Property is listed and sold through a broker.....	3.00%

Additional information regarding compensation as trustee:

This fee schedule does not include fees charged by outside professionals such as attorneys, accountants or investment advisors. These fees do not include the cost of tax return preparation or the preparation of work papers that may be used for tax preparation and trust accountings.

Extraordinary Services:

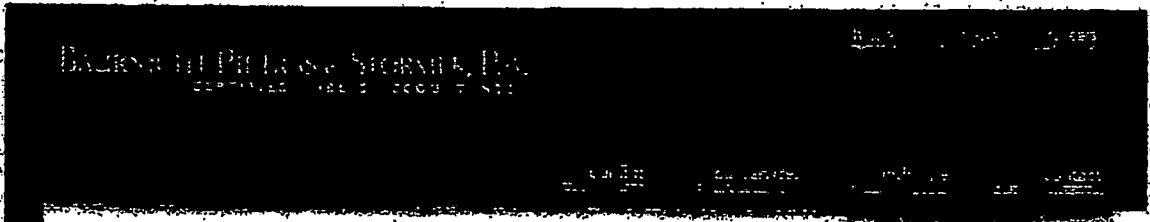
The forgoing schedule of compensation is for the normal services required in the administration of a trust. Where special services are required, appropriate additional charges will be made based upon the nature of the work involved and the extent of the duties and responsibilities assumed. Some examples of unusual services might include:

Other Fee Information:

The fee structure outlined above does not contemplate every situation with which the fiduciary may be faced. Special assets or unusual assets may require additional attention that will result in additional fees. (Examples of "special assets" include, but are not limited to, annuity income streams where charges based upon value may not be appropriate, intangible assets that may be difficult or expensive to value on a regular basis, bankruptcy situations or contingent assets.)

Addendum – Special Fiduciary Services and Fiduciary's Counsel:

All services performed as Special Trustee, Special Administrator, or in other similar fiduciary capacities shall be charged at the regular hourly rate for Russell Banknight charged by Banknight Pietras & Stormer, P.A. at the time such services are rendered (currently \$350.00 per hour). In addition, it is anticipated that the services of Nexsen Pruet, LLC will be retained to assist with legal matters associated with the administration of the estate and trusts and the related business matters. The hourly rates charged by those attorneys expected to assist significantly with these matters range from \$375.00 to \$500.00 per hour. The primary attorneys expected to be involved in the performance and supervision of these legal matters are Fred Kingsmore, Jr. and William (Corky) Klett III. Mr. Kingsmore specializes in tax, estate planning and probate and currently charges at a rate of \$450.00 per hour for matters of this type. Mr. Klett specializes in intellectual property matters, including copyright law, both domestic and international, and currently charges at a rate of \$425.00 per hour for matters of this type. Other lawyers in the firm of Nexsen Pruet, LLC may be used from time to time but their rates will not exceed those rates charged by Messrs. Kingsmore and Klett.



Firm Leaders



Bauknight, Russell L.

rbauknight@bpscpas.com
803.771.8643

Prior to founding Bauknight Pietras & Stormer, P.A. in 1991, Russell was a senior tax manager in Ernst & Young's Columbia office. With over twenty-two years of experience in public accounting, Russell serves some of South Carolina's wealthiest individuals. Russell concentrates his efforts on consulting and planning for family-owned businesses and their owners; estate and financial plans; and plans for major charitable gifts.

Russell also serves clients that include real estate companies, agricultural companies, distributors, retailers, large trusts and estates, as well as wealthy individuals.

Education

Attended the University of South Carolina, Columbia, S.C., and graduated from Towson State University, Baltimore, Md. in 1980 with a degree in Accounting. Graduate of the American Institute of Certified Public Accountants (five-year program) Graduate Tax School at the University of Illinois-Urbana-Champaign Graduate of the Ernst & Young Advanced Development Program for Tax Professionals (Subsequently assisted as an instructor/facilitator for this program)

Organizations

Member of the American Institute of Certified Public Accountants
Member of the South Carolina Association of Certified Public Accountants
Member of the Board of Directors of South Trust Bank of South Carolina (Past Chairman, Executive Committee)
Member of the Board of Directors of South Trust Bank of the Midlands
Member of the Lake Murray-Imo Rotary Club (Past President)
Graduate of Leadership Columbia 1989
Member of the Board of Directors of the Executives Association of Greater Columbia

Services Available

- About the Firm
- Firm Values
- Shareholders
- Audit Staff
- Tax Staff
- Administration Staff
- Small Business Staff
- Other Staff

Client Services

Client can access documents prepared by our staff.

Log in to the client area

[home](#) : [about the firm](#) : [services](#) : [industries](#) : [contact](#) : [news](#) : [careers](#)

Copyright 2008, Bauknight Pietras & Stormer
All Rights Reserved.

Exhibit J

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

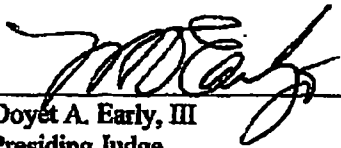
2017 MAR 15 AM 9:03
RICHLAND COUNTY
FILED
JEANETTE
C.C.P.

ORDER CONCERNING PLAINTIFFS'
MOTION TO STRIKE A JANUARY 17,
2017 AFFIDAVIT OF DEFENDANT

DAVEY

Plaintiffs in Richland Case 4900 moved this Court for an Order striking the Affidavit of the Defendant that was filed by her on January 17, 2017. A hearing was held on the motion on February 6, 2017, at which time all parties were heard. After having considered the arguments, the Court orders as follows: (1) The subject Affidavit will be placed under seal; (2) All further Affidavits filed by the Defendant will be filed under seal; (3) A determination will be made at the time of trial which Affidavits will be used in the trial of this matter. This Order specifically makes no finding about the content of the January 17, 2017 Affidavit. Motions, which have previously been filed in this matter to strike other affidavits, will be heard by this Court, only after at least ten days notice.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

March 9, 2017
Bamberg, South Carolina.

Exhibit 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Adele J. Pope,)
)
Plaintiff,)
)
v.)
)
Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

PLAINTIFF'S BRIEF REGARDING
ISSUES FOR 11/2/20 HEARING

Plaintiff Adele J. Pope ("Plaintiff") submits this brief setting out her position on the issues before this Court on remand from the Court of Appeals' decision in *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019) and subsequent to Defendant's production of a responsive document in May 2020.

This action was brought under the South Carolina Freedom of Information Act ("FOIA") on August 10, 2011, after the South Carolina Attorney General ("AG") refused to make a substantive response to Plaintiff's request for public documents under FOIA. Based on its position that certain of the documents sought under FOIA were also the subject of discovery requests and motions in *Bauknight, et al, and Wilson, et al v. Pope*, Case No. 2010-CP-40-4900 ("Richland 4900"), the AG, without identifying any requested document as being exempt from FOIA, proposed to put Plaintiff's request on hold pending resolution of the Richland 4900 discovery matters.

In March 2013, the AG moved to amend his answer herein. His proposed answer, allowed by Order of this Court dated March 5, 2020, contains attachments responsive to certain of Plaintiff's FOIA requests. It further asserts that the AG is not in possession of documents responsive to Plaintiff's request for any document authorizing Russell L.

Bauknight to speak for the AG in Richland 4900. The AG nonetheless continued to refuse to turn over the contract with Sweeny, Wingate & Barrow, P.A. ("Wingate") based on the AG's assertion that the document was subject to discovery motions in Richland 4900. In Paragraph 33 of its Amended Answer, first presented in 2013, the AG takes the position that it is in possession of a "three page document" which "could be considered responsive" to Plaintiff's 2011 FOIA request, but which it continued to withhold based on its assertion that the document was "under judicial review."

On February 24, 2020, more than eight (8) years into this FOIA action, the AG filed a memo which for the first time asserted that the "three page document" in its possession was not responsive to Plaintiff's 2011 FOIA request.

Only after this Court's resolution of discovery motions in *Bauknight v. Pope* (which had been pending for approximately 9 years) did the AG turn over any document responsive to the portion of Plaintiff's 2011 FOIA request seeking a copy of the contract between the AG and Wingate, and his cover letter indicates that his disclosure is not made under FOIA; is voluntary; and asserts that the document is not responsive to Plaintiff's 2011 FOIA request. (See Exhibit K to Affidavit of Pope¹, filed herewith)

In October 2020, the AG released several documents in response to a FOIA request by a Newberry journalist's FOIA request which had never been presented or acknowledged in this case, despite bearing directly on issues which have been presented herein. These documents are attached to and described in the Affidavit of Adele J. Pope, filed herewith, and include a letter from private counsel to the AG, attached to the Pope Affidavit as Exhibit B,

¹ Plaintiff notes that two typographical errors are present in her Affidavit, namely that Paragraph 19 should read "the AG never had never hired Wingate," rather than "SWB had never hired Wingate" and Paragraph 35 should read "is necessary" rather than "in necessary."

advising it to withhold the Wingate contract. In that letter, Mark V. Gende, Esquire, suggests that release of the document “will certainly incur the sanction of attorney [sic] fees in the pending FOIA actions.” Mr. Gende further asserted that such a “defeat [would] be more costly and embarrassing than a decision to continue litigating the fee agreement issue.” The letter goes on to suggest that the AG would be in compliance with FOIA to continue withholding the document “until the Court has determined whether any of the fee agreement is privileged.”

The issue of privilege, which appears only to have ever been raised by Wingate, rather than the AG, has always been a red herring in this FOIA case. It appears that the AG has never claimed any document requested herein was exempt because it was privileged, and the claim of Wingate’s private clients that any document was privileged is completely undermined by the AG’s possession of the document. This was directly addressed by then-Chief Deputy Attorney General John W. McIntosh in an April 24, 2013 letter (released for the first time in October 2020) to Wingate, which advises Wingate that “the Office of the Attorney General has never been a client of [Wingate]” in Richland 4900.

This Case is not Moot, and the Wingate Agreement is a Public Document

The AG has indicated that he intends to argue that Plaintiff’s request for the Wingate agreement is moot because of its disclosure by a third party pursuant to a Federal Court Order in August 2013. This argument is specious.

The AG continued, even after the Federal Order, to refuse to produce the Wingate agreement. See November 27, 2013 letter of Emory Smith, Esquire, attached as Exhibit D to Plaintiff’s February 18, 2020 Brief herein. Only by letter of Mr. Smith, dated May 20, 2020, did the AG produce the three-page document it had refused to produce to Plaintiff under FOIA since 2011.

Our Supreme Court has held that a FOIA action for declaratory and injunctive relief is mooted *upon the public body's production of the requested document*, which has never happened in this case as to the Wingate agreement. See *Sloan v. SCDOR*, 409 S.C. 551, 762 S.E.2d 687 (2014). As Mr. Smith's letter correctly notes, the copy of the Wingate agreement received by Plaintiff was from a third party, not from the AG. The FOIA contains no provision connecting a public body's FOIA obligations to whether the requesting person may already possess the same or similar documents from another source.

The Wingate agreement was first produced by the AG in May 2020, but the AG continues to maintain that it is not produced under FOIA to Plaintiff. This Court should issue the declaratory judgment sought in the complaint herein and direct the AG to fully comply with Plaintiff's valid 2011 FOIA request.

The Wingate Agreement is not within any FOIA Exemption

To date, the AG has never identified any particular exemption in the FOIA statute which would prevent release of the Wingate agreement, and none does.

The AG, after the Court of Appeals' opinion in this case, continues to assert that the Wingate contract was subject to an exemption under FOIA, namely §30-4-40(a)(4), which exempts "[m]atters specifically exempted from disclosure by statute or law." (See AG's Supplemental Memorandum, dtd. 2/18/20, p. 5) Notably, this is the same exemption the AG had advanced beginning in 2013 and which the Court of Appeals found required the AG to identify the "specific language of a discovery rule that expressly prohibits disclosure of a particular type of record."

The AG then attempts to specifically identify rules which allegedly support its position, including Rule 26 and Rule 34(b). Even as interpreted and quoted by the AG, neither of these

expressly prohibits the AG's disclosure of the document. This is especially true in light of the revelatory documents attached to the Affidavit of Pope filed herewith, which show that it first asserted this exemption at nearly the same time it advised Wingate that it had never been Wingate's client and that no privilege existed between them. (Aff. Pope, Ex. I)

Because the AG has never made a proper FOIA response to Plaintiff's 2011 request, this Court should proceed with directing the AG to fully comply with the FOIA and finding that the AG had not meaningfully complied with the FOIA until at least May 20, 2020.

Plaintiff is Entitled to an Award of Attorney's Fees and Costs

The other remaining issue on remand is Plaintiff's cause of action for attorney's fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff has previously submitted an affidavit of her attorney, Adam T. Silvernail, which sets out that \$49,521.15 in fees and costs had been incurred through February 18, 2020. Plaintiff notes that pursuant to the Supreme Court's holding in *Sloan, supra*, she is entitled to any further fees and costs incurred until this case is finally determined. Plaintiff reserves the right to submit an affidavit at such time the Court determines the remaining FOIA issues in this matter and decides that Plaintiff is entitled to recover her fees and costs herein.

Even if this Court were to determine that the AG's May 2020 release of a portion of the Wingate Contract mooted the declaratory and injunctive relief (which, Plaintiff submits for the reasons set out above, it should not), it is undisputed that at least one document Plaintiff requested was withheld for just under nine (9) years after the original FOIA request was made.

Further, although none of the substantial fees and costs herein *should* have been incurred – had the AG complied with the FOIA in the first instance – these fees are exceedingly

reasonable given the lengthy and complicated litigation required herein. In *Summer v. Wilson*, a journalist's FOIA case (involving some of the same documents) which was filed in 2012 and concluded August 2015 resulted in The Honorable Eugene C. Griffith, Jr., granting that Plaintiff's counsel fees and costs of more than \$39,000. (See Order, dtd. 8/19/15, Exhibit J to Affidavit of Pope)

Plaintiff notes that her fee request is based on time averaging approximately 20 hours *per year*, and she submits that the substantial total is a result of the AG's refusal to produce public documents and his causing substantial delay and complication in this matter. The fees and costs incurred herein were substantially increased by the successful appeal necessitated by the AG's litigation of this matter.

The affidavit submitted contains substantial evidence bearing on the factors to be considered in determining reasonable fees, including Plaintiff's counsel's experience and the complexity of the matter litigated. *See Burton v. York County Sherriff's Dep't*, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct.App. 2004). Plaintiff also notes that the Supreme Court's most recent review of a FOIA fee award resulted in approval of a fee exceeding \$35,000 based on a total of 135 hours² in a case which was commenced in 2013 and concluded in the Supreme Court in 2018. Plaintiff submits that the approximately 186 hours her counsel has spent on this matter through nearly 9 years and a successful appeal are reasonable.

Conclusion

For the reasons set forth above, Plaintiff asks that this Court order the AG to immediately and fully respond to her 2011 FOIA request and to pay the reasonable attorneys'

² These totals did not include fees and costs incurred in the appeal of that matter. The Court of Appeals eventually granted, and the Attorney General has paid, the costs allowed under the Appellate Court Rules. As will be reflected in an updated affidavit, however, the additional time and costs incurred in the meantime will result in the amount now due having changed very little.

fees and costs incurred in bringing and maintaining this action to enforce Plaintiff's FOIA rights.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernailfirm.com

October 27, 2020

Attorney for Plaintiff

ELECTRONICALLY FILED - 2020 Oct 27 2:00 PM - RICHLAND - COMMON PLEAS - CASE#2010CP4004900

Exhibit 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
)
Plaintiff,)

Case No. 2010CP4004900
[formerly Newberry Co. Case No.
2011-CP-36-379]

v.)

Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)
_____)

**MEMORANDUM
OF ATTORNEY GENERAL
FOR 11/2/2020 HEARING**

Russell L. Bauknight, etc., Henry Dargan)
McMaster, in his capacity as Attorney)
General, etc, et al,)

Plaintiffs,)

Case No. 2010-CP-40-4900

v.)

Adele J. Pope and Robert L. Buchanan, Jr.,)
)
Defendants.)
_____)

Plaintiff apparently wants the Office of Attorney General to produce pursuant to Court Order what it has already given her voluntarily. This request is baseless under the law and facts of this case. In the Second Supplemental Memorandum submitted earlier this year in which the Attorney General said the following

Although the unsigned [three pate Wingate document] that the Office of the Attorney General has and the signed document produced in Federal litigation appear to be the same, upon closer examination in preparation for the hearing in this case on February 21, we have found that they contain a few differences. Therefore, the unsigned document that the Office of the Attorney General has is neither an agreement nor an unsigned copy of the "contract of the then AG [Henry D. McMaster] and /or the State of South Carolina engaging Kenneth B. Wingate" which Plaintiff requested in her FOIA letter.

Accordingly, the unsigned document that we have is not responsive to Plaintiff's original FOIA request for a copy of the "contract," and it is not subject to production under FOIA. Nevertheless, because we have said that we would produce the document if the court rules that the agreement¹ itself is subject to production in discovery in case 4900, we will voluntarily produce the unsigned document if such a ruling is made. Any such production of the unsigned document, would be solely discretionary and not due to Plaintiff's FOIA request or this litigation.

Therefore, the document was not responsive to the FOIA and produced only voluntarily. Further, the document, even if responsive, was not subject to production under FOIA earlier. As stated in the Attorney General's Supplemental Memorandum in this case:

The Attorney General asserts that the Wingate document is exempt from discovery and therefore, FOIA, as privileged matter under the pending Motion for Protective Order and a matter under the control of the court pursuant to that Motion under the Rules of Civil Procedure because its production is under consideration pursuant to the Rules 26, 34 and 37. These rules make clear that the court presiding over discovery makes the decision about the disclosure of documents under pending motions. These discovery provisions constitute exemptions under the Rules of Civil Procedure and therefore, fall under FOIA's exemption of "[m]atters specifically exempted from disclosure by statute or law" (§30-4-40(a)(4)), and the circuit court's consideration of these motions constitutes, "the rule of law" which must be observed.

Plaintiff's case should be dismissed for the above reasons. For the record, this Court should also grant the motions to strike her affidavits for all the reasons set forth in the Attorney General's February 18, 2020, Supplemental Memorandum.

Because the Plaintiff is not entitled to prevail in this case, she is not entitled to Attorney's Fees. In addition, her attorney's affidavit is conclusory and does not set forth an itemized list of tasks and time on this case which are essential in determining the reasonableness of the fee. *See eg.*, S.C. Code Ann. §30-4-100 (may be awarded reasonable attorney's fees); §15-77-330

¹ The Attorney General was not a party to the agreement. *See*, Supplemental Memorandum of February 18, 2020, at p. 4, citing letter of November 27, 2013, to the Honorable Casey Manning.

(Requiring itemized statement before payment of fees); *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997)(six factors must be considered in determining a reasonable attorney's fee) cited in *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 357-58, 594 S.E.2d 888, 898 (Ct. App. 2004). (In a FOIA action, "[t]he award . . . must be reasonable and supported by adequate findings."). In particular, Plaintiff should not be able to claim time for any work in the filing of the affidavits subject to the motions to strike.

CONCLUSION

For the foregoing reasons, the Attorney General requests that this Court grant him judgment in this case.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
(803)734-3677 (Fax)
esmith@scag.gov

November 2, 2020

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

NOV 05 2020

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown and ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

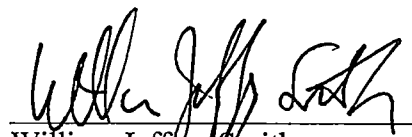
Of whom Adele J. Pope is Appellant.

**CERTIFICATE OF SERVICE OF MOTION FOR JUDICIAL
NOTICE AND EXPEDITED CONSIDERATION OF APPEAL
BASED ON ATTORNEY GENERAL'S OCTOBER 2020 PUBLIC
RELEASE OF DOCUMENTS BEARING ON CRITICAL ISSUES
HEREIN**

I certify that on November 5, 2020, a true and accurate copy of the
MOTION FOR JUDICIAL NOTICE AND EXPEDITED
CONSIDERATION OF APPEAL BASED ON ATTORNEY
GENERAL'S OCTOBER 2020 PUBLIC RELEASE OF DOCUMENTS
BEARING ON CRITICAL ISSUES HEREIN
was hand-delivered to the offices of the attorneys of record in this case at the address

below:

Kenneth B. Wingate, Esquire Mark V. Gende, Esquire Joseph O. Thickens, Esquire Sweeny, Wingate & Barrow, P.A. 1515 Lady Street Columbia, SC 29201	J. Emory Smith, Jr., Esquire Office of the Attorney General 1000 Assembly Street Columbia, South Carolina 29201
--	--



William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
Email: wjstv@mindspring.com
SC Bar No. 0005225
Attorney for the Appellant