

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
9th Judicial Circuit Court Judge

RECEIVED

Dec 29 2020

SC Court of Appeals

App. Case No. 2020-000968
Circuit Court Case No. 2002-CP-10-1448
and after change of venue:
Circuit Court Case No. 2007-CP-10-1444

C. Holmes,

Respondent-Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Appellant-Respondents.

Respondent-Appellant's Response to Motion to Dismiss Cross-Appeal

Chalmers C. Johnson
2965 Beach St., E.
Port Orchard, WA 98366
425.999.0900
Attorney for Respondent-Appellant

The Appellant-Respondent, (hereinafter referred to as Haynsworth) has moved to dismiss Respondent-Appellant's (hereinafter Dr. Holmes) cross appeal, pointing out that, on October 17, 2020, Dr. Holmes' counsel filed a notice of receipt of transcript indicating the transcript was received on October 11th and that the undersigned then filed the initial brief on November 15th, a few days after the 30 days allotted for the filing of an initial brief by SCACR 208(a)(1). The Rule calls for a party to file and serve initial briefs within 30 days of receipt of a transcript. Rule 263 SCACR governs the computation of time:

(a) Computation. In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.

Rule 263, SCACR

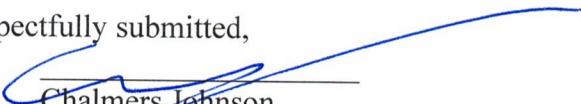
If the transcripts were received by Mr. Johnson (Dr. Holmes' Counsel of Record) on October 11, 2020, then the 30th calendar day thereafter would have been Tuesday, November 10, 2020. The undersigned erred in counting thirty days from the notice of receipt of transcripts (which was October 17, 2020) rather than from the date of receipt and filed the brief on November 15th (a Sunday). Haynsworth was then required, by Rule 208(a) (2): **"Brief of Respondent.** Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service." Haynsworth chose to wait for 30 days to file a motion to dismiss (the motion was filed on December 15th), and asked for all time limits to be held in abeyance pending consideration of its motion, thereby granting itself a lengthy, de facto extension to file its responsive brief.

The undersigned admits that he calculated the time for the initial brief from the date of the filing of the notice of receipt of transcript instead of the actual date of receipt and would present this as falling within the purview of excusable neglect. This resulted in a de minimis four day overshoot of the 30 days deadline, two days of which were weekend days. The Court should consider whether there was

any prejudice to Haynsworth. There was not. The undersigned reached out to Haynsworth's lawyer, noting that Haynsworth had not alleged any prejudice and asking her to consider withdrawing the motion to dismiss, as the undersigned had granted all extensions requested by Haynsworth's counsel during the pendency of this appeal. Those extensions are included in the record as motions Haynsworth made with consent of the undersigned noted. (See **Exhibit A**, attached) Haynsworth's counsel responded to the undersigned's request, explaining that she just felt she owed it to her firm to try to get the case dismissed for failure to file. (See **Exhibit B**, attached) Not only has the four-day delay caused no prejudice to Haynsworth, but Haynsworth's actions have more than made up for any prejudice that could possibly have occurred by filing this motion. By declining to dismiss, the Court will have, in effect, granted a 4 days extension to Dr. Holmes to file her initial brief. This is within the authority of the Court. Rule 263 (b) allow the Court to extend a deadline, such as the time to file an initial appeal. "The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof." Rule 263(b)

Because Dr. Holmes' delay in filing the Initial Brief was de minimis, was due to excusable neglect by her counsel, caused no prejudice to Haynsworth, and because Haynsworth, by filing this motion on the day its response brief would have been due, has now granted itself a fairly lengthy extension while the motion is being considered, thereby negating any prejudice that could be contemplated, Dr. Holmes respectfully requests that the Court decline to dismiss the cross appeal and order Haynsworth to respond so that we can address the issues raised in the cross appeal on their merits.

Respectfully submitted,



Chalmers Johnson
2965 Beach St., E.
Port Orchard, WA 98366
425.999.0900
Attorney for Respondent-Appellant

December 24, 2020

A



Chalmers Johnson <chalmersjohnson@gmail.com>

Re: Holmes v. Haynsworth Sinkler Boyd, Appeal No. 2020-000968

1 message

Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com>

To: Chalmers Johnson <chalmersjohnson@gmail.com>

Cc: "Caskey, Mary" <mcaskey@hsblawfirm.com>

Wed, Jul 22, 2020 at 4:58 PM

Thanks!

Mary Cothonneau Eldridge
Attorney
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201
803.540.7708
-HSB-

On Jul 22, 2020, at 7:49 PM, Chalmers Johnson <chalmersjohnson@gmail.com> wrote:

Yes, please let the court know that we conferred and I consented.
Chalmers

On Wed, Jul 22, 2020 at 5:13 AM Eldridge, Mary Cothonneau <meldridge@hsblawfirm.com> wrote:

Chalmers,

I am assisting Mary Caskey with HSB's initial brief in the above-referenced matter, which by our calculation is due on July 30. Would you consent to a 30 day extension for our initial brief?

Thank you,

Mary Cothonneau

<image001.gif.attachctrl>

Mary Cothonneau Eldridge | Attorney

Direct 803.540.7708 | meldridge@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor | Columbia, SC 29201

Main 803.779.3080 | Fax 803.765.1243

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

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hsbpø-

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Sincerely,
Chalmers C. Johnson

Longshot Law, Inc.
P.O. Box 1575
Port Orchard, WA 98366
(425) 999-0900

HAYNSWORTH image001.gif
SINKLER BOYD 3K



Chalmers Johnson <chalmersjohnson@gmail.com>

Re: Holmes v. Haynsworth - request for extension

1 message

Chalmers Johnson <chalmersjohnson@gmail.com>

Thu, Jul 23, 2020 at 2:29 PM

To: "Willoughby, Amanda" <awilloughby@hsblawfirm.com>

Cc: "Caskey, Mary" <mcaskey@hsblawfirm.com>, "Eldridge, Mary Cothonneau" <meldridge@hsblawfirm.com>

Received, thank you. Looks fine.
Chalmers

On Thu, Jul 23, 2020 at 10:59 AM Willoughby, Amanda <awilloughby@hsblawfirm.com> wrote:

Please see the attached that is being sent to the court today.

**HAYNSWORTH
SINKLER BOYD****Amanda Willoughby** | ParalegalDirect 803.540.7816 | awilloughby@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor | Columbia, SC 29201

Main 803.779.3080 | Fax 803.765.1243

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Sincerely,

Chalmers C. Johnson

**Longshot Law, Inc.
P.O. Box 1575
Port Orchard, WA 98366
(425) 999-0900**

**HAYNSWORTH
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

MARY COTHONNEAU ELDRIDGE
DIRECT 803.540.7708
meldridge@hsblawfirm.com

July 23, 2020

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *C. Holmes, M.D. v. Haynsworth*
Case No. 2007-CP-10-1444
Appellate Case No. 2020-000968
HSB File No. 04625.1439

Dear Ms. Kitchings:

I represent the Appellant Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A. ("HSB") in the above-referenced matter. I am writing to request an extension of time for HSB to file its Initial Brief. Counsel for HSB filed its Notice of Appeal on June 30, 2020. By HSB's calculations, its Initial Brief is due on July 30, 2020. HSB respectfully requests that the Court grant its request for a 30-day extension to file its Initial Brief, with a new due date of August 31, 2020.

HSB contacted counsel for Respondent, who is copied on this correspondence, with regard to the above-referenced request and counsel for Respondent consented to HSB's request.

Enclosed is a \$50 check for the filing fee. We would appreciate your returning clocked-in copies to us in the enclosed envelope. Thank you for your attention to this matter, and please let me know if you have any questions.

Sincerely,



Mary Cothonneau Eldridge

Enclosure

cc: Chalmers Johnson, Esq. (via e-mail only)
Mary M. Caskey, Esq. (via e-mail only)

The South Carolina Court of Appeals

Cynthia Holmes, M.D., Respondent,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler &
Boyd, P.A., Manton Grier and James Y. Becker,
Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to
Sinkler & Boyd, P.A., is the Appellant.

Appellate Case No. 2020-000968

The Honorable Jennifer B. McCoy
Charleston County
Trial Court Case No. 2007CP1001444

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until August 31, 2020.

FOR THE COURT

BY V. Claire Allen
CLERK

Columbia, South Carolina

cc:

Mary M Caskey, Esquire

Chalmers Carey Johnson, Esquire

Mary Cothonneau Eldridge, Esquire

FILED
Jul 29 2020

B



Chalmers Johnson <chalmersjohnson@gmail.com>

Re: Holmes v. Haynsworth

1 message

Chalmers Johnson <chalmersjohnson@gmail.com>
To: "Caskey, Mary" <mcaskey@hsblawfirm.com>

Mon, Dec 21, 2020 at 9:57 AM

Thank you for your prompt response. Best wishes for the new year.
Chalmers Johnson

On Mon, Dec 21, 2020 at 9:40 AM Caskey, Mary <mcaskey@hsblawfirm.com> wrote:

Chalmers: I do not want to withdraw my motion to dismiss. The appeal is completely frivolous (as are the dozens before it) and if I can get it dismissed due to the failure to file, I owe that to my firm.

However, I am happy to grant an extension for you to respond to the motion to avoid you having to respond over the holidays.

Mary

**HAYNSWORTH
SINKLER BOYD**

Mary M. Caskey | Attorney
Certified Specialist in Bankruptcy and Debtor-Creditor Law

Direct 803.540.7870 | mcaskey@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor | Columbia, SC 29201

Main 803.779.3080 | Fax 803.765.1243

[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Chalmers Johnson <chalmersjohnson@gmail.com>
Sent: Monday, December 21, 2020 12:16 PM

To: Caskey, Mary <mcaskey@hsblawfirm.com>

Subject: Holmes v. Haynsworth

Good morning, Mary,

I received your motion to dismiss. It looks like I set my calendar for a due date from the date of the notice and not the receipt. I don't see any prejudice asserted. Would you be willing to return the favor on the extensions I have granted to you in this appeal and withdraw your motion to dismiss so I don't have to spend Christmas writing a response? I would be happy to give you an extension on your responsive brief if you need one.

--

Sincerely,

Chalmers C. Johnson

Longshot Law, Inc.

P.O. Box 1575

Port Orchard, WA 98366

(425) 999-0900

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Sincerely,

Chalmers C. Johnson

Longshot Law, Inc.

P.O. Box 1575

Port Orchard, WA 98366

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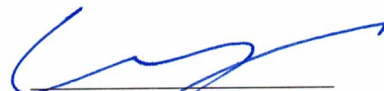
James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Appellant-Respondents.

PROOF OF SERVICE
for
Respondent-Appellant's Response to Motion to Dismiss

I certify that I have served a copy of the foregoing Return on the appellant-respondents by email
at mcaskey@hsblawfirm.com and by mail at 1201 Main St. #2200 Columbia, SC 29201

Dated: December 24, 2020



Chalmers Johnson
2965 Beach Dr. E
Port Orchard, WA 98366
425.999.0900
Attorney for Respondent-Appellant