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**Aug 30 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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Case No. 2015-CP-04-00667  
Appellate Case No. 2020-000070

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Ex Parte: Donald L. Smith,  
In Re: Greg Battersby,

Appellant,  
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A., All State Insurance Company,  
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A.,

Respondents.

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**FINAL REPLY BRIEF OF APPELLANT**

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Anderson, South Carolina  
August 30, 2021.

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## STATEMENT OF ISSUES

- I. **WHETHER THE RIGHT TO APPEAL IS LIMITED TO THE TRIAL COURT'S MOST RECENT ORDER, DATED DECEMBER 16, 2019 DIRECTING THE MONETARY SANCTIONS TO BE ENTERED AS JUDGMENT.**
  
- II. **WHETHER THE SANCTIONS WERE WARRANTED AGAINST THE APPELLANT.**

## STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Case and Facts presented in his Initial Brief.

## ARGUMENTS

### I.

#### **APPELLANT'S RIGHT TO APPEAL IS NOT LIMITED TO THE TRIAL COURT'S ORDER, DATED DECEMBER 16, 2019.**

Rule 203 of the South Carolina Appellate Court Rules (SCACR) provides in part:

...When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order and judgment.

Respondents contend the February 3, 2016, Order Granting the Sanctions was not appealed. (Respondent's Final Brief). What Respondents conveniently omitted in their Initial Brief was the fact Appellant filed a Motion for Reconsideration of the aforesaid Order, which was denied by the trial court in its Form 4, dated April 21, 2016. However, since the Form 4 explicitly indicated a formal order was to be issued, and the trial court instructed Respondent Moorhead to draft the same, the Form 4 may not be considered a complete Order or Judgment. (R., p. 6). The December 16, 2019, Order is an indication that Form 4 was not a complete judgment. In short, since the Form 4 was not a complete judgment, appeal at that time would

have been premature.

## **II.**

### **THE SANTIONS WERE NOT WARRANTED AGAINST APPELLANT.**

In their Initial Brief, Respondents argued the Form 4 was the final order since no formal order was ever issued by the trial court. (Respondent's Final Brief). This analysis is illogical. Based on the fact the Court expressly stated a formal order would be forthcoming, when should an appeal have been filed? Would it have been after the first month without a formal order? Would it have been after the first year without an order? Would it have been after the third year without an order? Had Appellant appealed the Form 4 after the issuance of the Form 4, then it would have been dismissed as untimely and premature.

Respondents contend had the trial court issued a formal order, it would not have changed the substance of the ruling of Form 4. That is not necessarily the issue in his case. Appellant relied, and rightfully so, that a formal Order would be issued. The formal order would provide not only the issues on which to appeal, but a date certain to file a Notice of Appeal.

As an alternative theory, Respondents assert that if the matter was to be remanded when Trial Court issues a formal order then it would only give Appellant an opportunity to file an appeal on the underlying Monetary Sanctions against Appellant.

Firstly, despite the Formal Order, not having changed the substance of the court's ruling, it is still needed for Appellant to file his Notice of Appeal.

Secondly, since the December 16, 2019, Order contained clarification of the Form 4 issued on April 21, 2016, this may not be considered merely an Administrative Order, and in fact may take the form of the Formal Order. The Court never filed the Formal Order it stated it

would issue.

Thirdly, in terms of the merits of this case, Respondents have mistakenly declared Appellant conceded to the governing law. To the contrary, Appellant has been consistent in his position the instant case presents an exception to the general rule of attorney immunity doctrine.

Appellant clearly challenged Respondents' and Trial Court's determination that he did not conduct research on the aforementioned doctrine. Appellant has alleged the basis for the filing of the Complaint is the genuine belief Respondent acted outside the scope of his representation. Appellant has presented circumstantial evidence establishing the claim of conspiracy between Dunaway, Neal and Morton, which Respondents' act facilitated. A jury comprised of Anderson County jurors saw the conspiracy to the tune of \$112,000.00, against the remaining defendants, Neal and Morton. (R., pp. 229-230; p. 449).

In arguing Respondent stepped outside the scope of their role as attorneys, Appellant did not refer only to Respondent's act of assisting their client with the online LLR Complaint, but in knowingly providing false information and/details on the LLR Complaint and/or deliberately failing to correct or amend the same. This act runs afoul with Rule 3.3 as well as 3.4 of the Rules of Professional Conduct. Therefore, contrary to Respondents' contentions that complaint was devoid of basis in law or in fact, Appellant had a legal basis in filing the claim for conspiring with the co-defendants to damage Appellant for financial gain.

Appellant filed this Complaint in good faith and did not seek to perpetrate fraud nor cause unnecessary delay on this Court. Respondents have not alleged nor proved Appellant's filing of this complaint is a reprehensible act, going beyond mere negligence and evincing intent. Neither did Respondents aver Appellant filed the Complaint with the sole objective of harassing them. Respondents failed to allege Appellant's bad faith motives.

In sum, Appellant reiterates his position that the sanction imposed against his counsel was improper for the following reasons: (a) the motion did not comply with the consultation requirement under Rule 11 SCRPC; (b) the Complaint and all pleadings, had been withdrawn (pursuant to court order) prior to the request for sanction, (R., p. 17-18); (3) the Circuit Court erred in imposing the sanctions based on FCPSA “reasonable attorney” standards; (4) the complaint filed was not frivolous and was based on facts and documented evidence; (5) there was no finding Appellant was motivated by bad faith in filing the Complaint; (6) sanction was not appropriately tailored to achieve the purpose of the rule. Sanctions are meant to restore the balance to the matter, not to harass or injure the other party.

### CONCLUSION

Based on the foregoing, in addition to the arguments made in the opening brief, Appellant respectfully requests this Honorable Court to grant Appellant’s appeal, and to reverse the trial court’s imposition of sanctions against him.

Anderson, South Carolina  
August 30, 2021

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**CERTIFICATE OF COUNSEL**

I HEREBY CERTIFY that aside from correction of pagination in the Table of Authorities and the body of the brief to conform to the Record on Appeal, this Final Reply Brief of the Appellants in the above-captioned case complies with Rule 211 (b) SCACR.

Submitted by:

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