The Supreme Court of South Carolina

In the Matter of O. Allen Alexander, Respondent.

ORDER

The Office of Disciplinary Counsel seeks the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. See In the Matter of Alexander, Op. No. 26079 (S.C. Sup. Ct. filed December 12, 2005) (Shearouse Adv. Sh. No. 47). Respondent consents to the appointment of an attorney to protect his clients' interests.

IT IS ORDERED that John Thomas Falls, Jr., Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Falls shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Falls may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that John Thomas Falls, Jr., Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that John Thomas Falls, Jr., Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Falls' office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

December 12, 2005

The Supreme Court of South Carolina

In the Matter of Craig J. Poff, Respondent.

ORDER

The Office of Disciplinary Counsel seeks the appointment of an attorney to protect respondent's clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. See In the Matter of Poff, Op. No. 26080 (S.C. Sup. Ct. filed December 12, 2005) (Shearouse Adv. Sh. No. 47). Respondent consents to the appointment of an attorney to protect his clients' interests.

IT IS ORDERED that Anthony O'Neil Dore, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain. Mr. Dore shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Dore may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office account(s) respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Anthony O'Neil Dore, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Anthony O'Neil Dore, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Dore's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

December 12, 2005

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 47

December 12, 2005
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS - UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2005-UP-612-The State v. Darrin Bellinger
(Barnwell, Judge James C. Williams, Jr.)

2005-UP-613-David Browder v. Ross Marine et al.
(Charleston, Judge R. Markeley Dennis, Jr.)

2005-UP-614-Sandra Bush, Employee v. South Carolina Department of Corrections, Employer, and State Accident Fund, Carrier
(Dorchester, Judge James C. Williams, Jr.)

2005-UP-615-The State v. Leonard A. Carter
(Florence, Judge Clifton Newman)

2005-UP-616-The State v. Heather R. Herring
(Dorchester, Judge James C. Williams, Jr.)

2005-UP-617-The Gatherings Horizontal Property Regime v. Bobby S. Williams
(Beaufort, Judge Curtis L. Coltrane)

PETITIONS FOR REHEARING

4026-Wogan v. Kunze	Pending
4030-State v. Mekler	Pending
4034-Brown v. Greenwood Mills Inc.	Pending
4036-State v. Pichardo & Reyes	Pending
4037-Eagle Cont. v. County of Newberry et al.	Pending
4039-Shuler v. Gregory Electric et al.	Pending
4040-Commander Healthcare v. SCDHEC	Pending
4041-Bessinger v. BI-LO	Pending
2005-UP-535-Tindall v. H&S Homes	Pending
2005-UP-539-Tharington v. Votor	Pending
2005-UP-540-Fair et al. v. Gary Realty et al.	Pending

2005-UP-543-Jamrok v. Rogers et al.	Pending
2005-UP-549-Jacobs v. Jackson	Pending
2005-UP-574-State v. T. Phillips	Pending
2005-UP-577-Pallanck et al. v. Lemieux et al.	Pending
2005-UP-580-Garrett v. Garrett	Pending
2005-UP-585-Newberry Elec. v. City of Newberry	Pending
2005-UP-586-State v. T. Pate	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3780-Pope v. Gordon	Pending
3787-State v. Horton	Pending
3809-State v. Belviso	Pending
3821-Venture Engineering v. Tishman	Pending
3825-Messer v. Messer	Pending
3832-Carter v. USC	Pending
3836-State v. Gillian	Pending
3842-State v. Gonzales	Pending
3849-Clear Channel Outdoor v. City of Myrtle Beach	Pending
3852-Holroyd v. Requa	Pending
3853-McClain v. Pactiv Corp.	Pending
3855-State v. Slater	Pending
3857-Key Corporate v. County of Beaufort	Pending

3858-O’Braitis v. O’Braitis	Pending
3860-State v. Lee	Pending
3861-Grant v. Grant Textiles et al.	Pending
3863-Burgess v. Nationwide	Pending
3864-State v. Weaver	Pending
3865-DuRant v. SCDHEC et al	Pending
3866-State v. Dunbar	Pending
3871-Cannon v. SCDPPPS	Pending
3877-B&A Development v. Georgetown Cty.	Pending
3879-Doe v. Marion (Graf)	Pending
3883-Shadwell v. Craigie	Pending
3890-State v. Broaddus	Pending
3900-State v. Wood	Pending
3903-Montgomery v. CSX Transportation	Pending
3906-State v. James	Pending
3910-State v. Guillebeaux	Pending
3911-Stoddard v. Riddle	Pending
3912-State v. Brown	Pending
3914-Knox v. Greenville Hospital	Pending
3917-State v. Hubner	Pending
3918-State v. N. Mitchell	Pending

3919-Mulherin et al. v. Cl. Timeshare et al.	Pending
3926-Brenco v. SCDOT	Pending
3928-Cowden Enterprises v. East Coast	Pending
3929-Coakley v. Horace Mann	Pending
3935-Collins Entertainment v. White	Pending
3936-Rife v. Hitachi Construction et al.	Pending
3938-State v. E. Yarborough	Pending
3939-State v. R. Johnson	Pending
3940-State v. H. Fletcher	Pending
3943-Arnal v. Arnal	Pending
3947-Chassereau v. Global-Sun Pools	Pending
3949-Liberty Mutual v. S.C. Second Injury Fund	Pending
3950-State v. Passmore	Pending
3952-State v. K. Miller	Pending
3954-Nationwide Mutual Ins. v. Erwood	Pending
3955-State v. D. Staten	Pending
3963-McMillan v. SC Dep't of Agriculture	Pending
3965-State v. McCall	Pending
3966-Lanier v. Lanier	Pending
3967-State v. A. Zeigler	Pending
3968-Abu-Shawareb v. S.C. State University	Pending

3970-State v. C. Davis	Pending
3971-State v. Wallace	Pending
3976-Mackela v. Bentley	Pending
3977-Ex parte: USAA In Re: Smith v. Moore)	Pending
3978-State v. K. Roach	Pending
3981-Doe v. SCDDSN et al.	Pending
3983-State v. D. Young	Pending
3984-Martasin v. Hilton Head	Pending
3985-Brewer v. Stokes Kia	Pending
3988-Murphy v. Jefferson Pilot	Pending
3989-State v. Tuffour	Pending
3993-Thomas v. Lutch (Stevens)	Pending
3994-Huffines Co. v. Lockhart	Pending
3995-Cole v. Raut	Pending
3996-Bass v. Isochem	Pending
3998-Anderson v. Buonforte	Pending
4000-Alexander v. Forklifts Unlimited	Pending
4004-Historic Charleston v. Mallon	Pending
4005-Waters v. Southern Farm Bureau	Pending
4006-State v. B. Pinkard	Pending
4014-State v. D. Wharton	Pending

4015-Collins Music Co. v. IGT	Pending
4020-Englert, Inc. v. LeafGuard USA, Inc.	Pending
4022-Widdicombe v. Tucker-Cales	Pending
2003-UP-642-State v. Moyers	Pending
2003-UP-716-State v. Perkins	Pending
2003-UP-757-State v. Johnson	Pending
2004-UP-219-State v. Brewer	Pending
2004-UP-271-Hilton Head v. Bergman	Pending
2004-UP-366-Armstong v. Food Lion	Pending
2004-UP-381-Crawford v. Crawford	Pending
2004-UP-394-State v. Daniels	Pending
2004-UP-409-State v. Moyers	Pending
2004-UP-422-State v. Durant	Pending
2004-UP-427-State v. Rogers	Pending
2004-UP-430-Johnson v. S.C. Dep’t of Probation	Pending
2004-UP-439-State v. Bennett	Pending
2004-UP-460-State v. Meggs	Pending
2004-UP-482-Wachovia Bank v. Winona Grain Co.	Pending
2004-UP-485-State v. Rayfield	Pending
2004-UP-487-State v. Burnett	Pending
2004-UP-496-Skinner v. Trident Medical	Pending

2004-UP-500-Dunbar v. Johnson	Pending
2004-UP-504-Browning v. Bi-Lo, Inc.	Pending
2004-UP-505-Calhoun v. Marlboro Cty. School	Pending
2004-UP-513-BB&T v. Taylor	Pending
2004-UP-517-State v. Grant	Pending
2004-UP-520-Babb v. Thompson et al (5)	Pending
2004-UP-521-Davis et al. v. Dacus	Pending
2004-UP-537-Reliford v. Mitsubishi Motors	Pending
2004-UP-540-SCDSS v. Martin	Pending
2004-UP-542-Geathers v. 3V, Inc.	Pending
2004-UP-550-Lee v. Bunch	Pending
2004-UP-554-Fici v. Koon	Pending
2004-UP-555-Rogers v. Griffith	Pending
2004-UP-556-Mims v. Meyers	Pending
2004-UP-560-State v. Garrard	Pending
2004-UP-596-State v. Anderson	Pending
2004-UP-598-Anchor Bank v. Babb	Pending
2004-UP-600-McKinney v. McKinney	Pending
2004-UP-605-Moring v. Moring	Pending
2004-UP-606-Walker Investment v. Carolina First	Pending
2004-UP-607-State v. Randolph	Pending

2004-UP-609-Davis v. Nationwide Mutual	Pending
2004-UP-610-Owenby v. Kiesau et al.	Pending
2004-UP-613-Flanary v. Flanary	Pending
2004-UP-617-Raysor v. State	Pending
2004-UP-632-State v. Ford	Pending
2004-UP-635-Simpson v. Omnova Solutions	Pending
2004-UP-650-Garrett v. Est. of Jerry Marsh	Pending
2004-UP-653-State v. R. Blanding	Pending
2004-UP-654-State v. Chancy	Pending
2004-UP-657-SCDSS v. Cannon	Pending
2004-UP-658-State v. Young	Pending
2005-UP-001-Hill v. Marsh et al.	Pending
2005-UP-002-Lowe v. Lowe	Pending
2005-UP-014-Dodd v. Exide Battery Corp. et al.	Pending
2005-UP-016-Averette v. Browning	Pending
2005-UP-018-State v. Byers	Pending
2005-UP-022-Ex parte Dunagin	Pending
2005-UP-023-Cantrell v. SCDPS	Pending
2005-UP-039-Keels v. Poston	Pending
2005-UP-046-CCDSS v. Grant	Pending
2005-UP-054-Reliford v. Sussman	Pending

2005-UP-058-Johnson v. Fort Mill Chrysler	Pending
2005-UP-113-McCallum v. Beaufort Co. Sch. Dt.	Pending
2005-UP-115-Toner v. SC Employment Sec. Comm'n	Pending
2005-UP-116-S.C. Farm Bureau v. Hawkins	Pending
2005-UP-122-State v. K. Sowell	Pending
2005-UP-124-Norris v. Allstate Ins. Co.	Pending
2005-UP-128-Discount Auto Center v. Jonas	Pending
2005-UP-130-Gadson v. ECO Services	Pending
2005-UP-138-N. Charleston Sewer v. Berkeley County	Pending
2005-UP-139-Smith v. Dockside Association	Pending
2005-UP-149-Kosich v. Decker Industries, Inc.	Pending
2005-UP-152-State v. T. Davis	Pending
2005-UP-160-Smiley v. SCDHEC/OCRM	Pending
2005-UP-163-State v. L. Staten	Pending
2005-UP-165-Long v. Long	Pending
2005-UP-170-State v. Wilbanks	Pending
2005-UP-171-GB&S Corp. v. Cnty. of Florence et al.	Pending
2005-UP-173-DiMarco v. DiMarco	Pending
2005-UP-174-Suber v. Suber	Pending
2005-UP-188-State v. T. Zeigler	Pending
2005-UP-192-Mathias v. Rural Comm. Ins. Co.	Pending

2005-UP-195-Babb v. Floyd	Pending
2005-UP-197-State v. L. Cowan	Pending
2005-UP-200-Cooper v. Permanent General	Pending
2005-UP-216-Hiott v. Kelly et al.	Pending
2005-UP-219-Ralphs v. Trexler (Nordstrom)	Pending
2005-UP-222-State v. E. Rieb	Pending
2005-UP-224-Dallas et al. v. Todd et al.	Pending
2005-UP-256-State v. T. Edwards	Pending
2005-UP-274-State v. R. Tyler	Pending
2005-UP-283-Hill v. Harbert	Pending
2005-UP-296-State v. B. Jewell	Pending
2005-UP-297-Shamrock Ent. v. The Beach Market	Pending
2005-UP-298-Rosenblum v. Carbone et al.	Pending
2005-UP-303-Bowen v. Bowen	Pending
2005-UP-305-State v. Boseman	Pending
2005-UP-319-Powers v. Graham	Pending
2005-UP-337-Griffin v. White Oak Prop.	Pending
2005-UP-340-Hansson v. Scalise	Pending
2005-UP-345-State v. B. Cantrell	Pending
2005-UP-348-State v. L. Stokes	Pending
2005-UP-354-Fleshman v. Trilogy & CarOrder	Pending

2005-UP-365-Maxwell v. SCDOT	Pending
2005-UP-373-State v. Summersett	Pending
2005-UP-375-State v. V. Mathis	Pending
2005-UP-422-Zepsa v. Randazzo	Pending
2005-UP-425-Reid v. Maytag Corp.	Pending
2005-UP-459-Seabrook v. Simmons	Pending
2005-UP-460-State v. McHam	Pending
2005-UP-471-Whitworth v. Window World et al.	Pending
2005-UP-472-Roddey v. NationsWaste et al.	Pending
2005-UP-483-State v. A. Collins	Pending
2005-UP-506-Dabbs v. Davis et al.	Pending
2005-UP-519-Talley v. Jonas	Pending
2005-UP-523-Ducworth v. Stubblefield	Pending

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of O. Allen Alexander, Respondent.

Opinion No. 26079
Submitted October 11, 2005 - Filed December 12, 2005

INDEFINITE SUSPENSION

Henry B. Richardson, Jr., Disciplinary Counsel, and Susan M. Johnston, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

O. Allen Alexander, of Columbia, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to either a definite suspension not to exceed two years or an indefinite suspension. We accept the Agreement and indefinitely suspend respondent from the practice of law in this state. The facts, as set forth in the Agreement, are as follows.

FACTS

Matter I

In October 2003, a client retained respondent to initiate post-divorce litigation. The client advised respondent that her ex-husband travels frequently out of the country and she made respondent aware of his travel schedule. The client expressed concern regarding her ex-husband's instability and her own safety. Despite apparent opportunities, the client's ex-husband had not been served at the time the client filed her complaint on July 28, 2004.

Matter II

In February 2004, respondent ordered a transcript from a court reporter. The court reporter sent respondent more than ten statements requesting payment. As of the date of the Agreement, respondent had not paid the court reporter.

Matter III

Clients retained respondent to assist with a property damage claim on their automobile. Respondent accepted the settlement check on the condition he would send the insurance company title to the automobile. Respondent disbursed the monies but never sent the title.

Matter IV

Respondent was retained to proceed in a collection matter. Respondent accepted approximately $1,125.00 in fees and costs and then ignored all inquires by the client and has not completed his services to the client.

Matter V

A couple retained respondent to represent them in regard to a non-disclosure issue in a real estate transaction. Respondent accepted a retainer of approximately $2,030.00 but failed to complete the services and subsequently refused all contact with the couple. The couple filed a claim with the Resolution of Fee Disputes Board which awarded them $1,530.00. Respondent failed to refund the unearned fee as awarded.

Matter VI

A circuit court judge reported respondent had failed to appear in his court for several matters even though he had been scheduled and notified to appear. Respondent's failures to appear were to the detriment of his clients. All of the judge's attempts to contact respondent about his failure to appear were unsuccessful.

Respondent has fully cooperated with ODC in connection with these matters.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information)); Rule 1.5 (lawyer's fee shall be reasonable); Rule 1.15 (lawyer shall promptly deliver any fees or property that a client or third person is entitled to receive); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 8.4(a) (it is professional misconduct for lawyer to violate the Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for a lawyer to engage in

conduct that is prejudicial to the administration of justice).[1] In addition, respondent admits his misconduct constitutes grounds for discipline under Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate the Rules of Professional Conduct), Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice), Rule 7(a)(6) (it shall be ground for discipline for lawyer to violate the oath of office taken upon admission to practice law in this state), and Rule 7(a)(10) (it shall be ground for discipline for lawyer to willfully fail to comply with a final decision of the Resolution of Fee Disputes Board).

CONCLUSION

We accept the Agreement for Discipline by Consent and indefinitely suspend respondent from the practice of law. ODC shall 1) determine the amount of restitution owed to respondent's clients and others who have been harmed as a result of respondent's misconduct and 2) institute a meaningful restitution plan. Within fifteen days of the date of this opinion, respondent shall surrender his certificate of admission to practice law in this state to the Clerk of Court and shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.[2]

INDEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

---

[1] Respondent's misconduct occurred before the effective date of the Amendments to the Rules of Professional Conduct. See Court Order dated June 20, 2005. The Rules cited in this opinion are those which were in effect at the time of respondent's misconduct.

[2] The parties agreed to the appointment of an attorney to protect respondent's clients' interests. By separate order, the Court will appoint an attorney to protect respondent's clients' interests.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Craig J. Poff, Respondent.

Opinion No. 26080
Submitted October 24, 2005 - Filed December 12, 2005

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Disciplinary Counsel, and C. Tex Davis, Jr., Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel.

Craig J. Poff, of Beaufort, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of an admonition, public reprimand, or definite suspension not to exceed sixty (60) days. We accept the Agreement and definitely suspend respondent from the practice of law in this state for a sixty (60) day period. The facts, as set forth in the Agreement, are as follows.

FACTS

In or about May 2003, the complainant obtained a home equity line of credit from Navy Federal Credit Union (Navy Federal). She was told by Navy Federal that Don Young would be the closing attorney. Don Young is the owner of American Title & Abstract; he is not a licensed attorney.

Respondent represents that, on the morning of May 12, 2003, a member of Mr. Young's office contacted him and asked if he could handle a closing in the afternoon. Respondent agreed to handle the closing. Respondent did not attend the closing; he represents he was unable to attend the closing at the scheduled time because he was in court on an unrelated matter.

Because he was unable to attend the closing, respondent telephoned a staff member at American Title & Abstract, where the closing was to occur, and requested that the complainant postpone the closing until he could arrive. When the complainant indicated she did not want any delay, respondent instructed the staff member to let the complainant execute the closing documents and leave them for him to review. Respondent never spoke with the complainant prior to executing the closing documents; he was not present at the closing itself; and respondent did not speak with the complainant after the closing.

Respondent represents he arrived at American Title & Abstract the following morning and, for the first time, reviewed the closing documents. Respondent asserts he spoke with a staff member at American Title & Abstract who stated that she had been present when the complainant executed the closing documents. The staff member provided respondent with the mortgage which the complainant had signed at the closing the day before. On page seven of the mortgage, the staff member verified to respondent that her own signature appeared on the line designated as Witness #1 and that she had personally observed the complainant execute the mortgage.

Respondent admits he affixed his signature on the line designated as Witness #2 even though he had not been present for the closing and had not personally witnessed the complainant execute the mortgage. On page eight of the mortgage, respondent notarized the staff member's statement that she, along with the other witness delineated on page seven (i.e., respondent), had witnessed the execution of the mortgage. Respondent admits this was a false statement as he was not personally present at the time the complainant executed the mortgage. He further admits he allowed the staff member to falsely swear before him as a Notary Public.

Respondent admits that, after reviewing the mortgage and settlement statement, he returned all original documents to Navy Federal pursuant to Navy Federal's instructions. Respondent represents he did not file the mortgage as this was not within the scope of his representation when contacted to handle the closing by American Title & Abstract. Respondent admits he assisted American Title & Abstract and Navy Federal in engaging in the unauthorized practice of law and that he participated in a real estate closing in clear violation of this Court's precedent.

LAW

Respondent admits that, by his misconduct, he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.2 (when lawyer knows client expects assistance not permitted by Rules of Professional Conduct, lawyer shall consult with client regarding relevant limitations on lawyer's conduct); Rule 5.5(b) (lawyer shall not assist a person who is not a member of the bar in the unauthorized practice of law); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (lawyer shall not engage in conduct

that is prejudicial to administration of justice).[1] In addition, respondent admits his misconduct constitutes grounds for discipline under Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(5) (lawyer shall not engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION

We accept the Agreement for Discipline by Consent and definitely suspend respondent from the practice of law for a sixty (60) day period.[2] Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur. MOORE, J., not participating.

---

[1] Respondent's misconduct occurred before the effective date of the Amendments to the Rules of Professional Conduct. See Court Order dated June 20, 2005. The Rules cited in this opinion are those which were in effect at the time of respondent's misconduct.

[2] In the event the Court suspended respondent, the parties agreed to the appointment of an attorney to protect respondent's clients' interests. By separate order, the Court will appoint an attorney to protect respondent's clients' interests.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John E. Cooke and Barbara Cooke, Respondents,

v.

Palmetto Health Alliance d/b/a Palmetto Richland Memorial Hospital, and Latisha C. Corley, Appellants.

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 4054
Heard October 11, 2005 – Filed December 12, 2005

AFFIRMED

Charles E. Carpenter, Jr., George C. Beighley, S. Elizabeth Brosnan and Drew Hamilton Butler, all of Columbia, for Appellants.

John S. Nichols and Robert B. Ransom, both of Columbia, for Respondents.

HEARN, C.J.: This is an appeal from the order of the circuit court, finding John E. Cooke was not a statutory employee of Palmetto Health Alliance (the Hospital) when he was injured. Because of this ruling, the circuit court found Cooke's negligence action and his wife's loss of consortium action were not barred by the exclusive remedy provision of the Workers' Compensation Act. We affirm.

FACTS

Cooke was employed as a pilot for Petroleum Helicopter, Inc., which contracted with the Hospital to transport critically injured patients to the emergency room. On December 13, 1999, Cooke tripped and fell over a metal rod that Latisha Corley, an employee of the Hospital, allegedly used to prop open a door at the Hospital. Because Cooke's injury occurred while in the course of his employment with Petroleum Helicopter, Cooke filed for and received workers' compensation benefits.

In addition to his workers' compensation claim, Cooke and his wife, Barbara, filed a complaint against the Hospital, alleging negligence and loss of consortium. After the court ruled that the Hospital could not be sued for punitive damages because of its status as a charitable organization, the Cookes amended their complaint to add Latisha Corley individually, alleging her method of propping open the door amounted to gross negligence.

In their answer, the Hospital and Corley (collectively Appellants) asserted, among other things, that Cooke was either the Hospital's statutory employee or borrowed servant at the time of the accident, and therefore, the exclusive remedy provision of the Workers' Compensation Act served as a complete bar to the Cookes' tort action.[1] After filing their answer, Appellants notified the Cookes of their intent to seek summary judgment. However, before the summary judgment motion was heard, Appellants, with the consent of the Cookes, made a motion for a hearing on the merits to

[1] Section 42-1-540 of the South Carolina Code (1985) provides that workers' compensation is the exclusive remedy against an employer for an employee's work related accident.

determine whether "the exclusive jurisdiction and exclusive remedy" was with the workers' compensation commission or with the circuit court.

At the hearing, the circuit court judge characterized the action before her as a "motion hearing" on "jurisdictional issues." The Appellants' attorney did not agree with the judge's characterization and said: "Your honor, this [is] not a motion. It was originally a motion for summary judgment. We're here today on the merits of whether . . . Mr. Cooke qualifies as a statutory employee of the hospital; and, therefore, barred under workmen's (sic) compensation." The attorney for the Cookes added: "We're here today to decide the merits of that. It's a question of law anyway, so it would be for your decision. But we decided to tee this issue up before we go further with the case, since this issue may decide the – will obviously decide the future course of the case." After hearing those explanations, the circuit court judge stated: "Well, that's why it seems to come up as a motion to dismiss the case . . . I didn't consider it to be a hearing on the merits where there would be testimony from an individual who would provide information about who his employer was and the contract, and all that information."

The hearing then proceeded, and although there were no live witnesses, both parties submitted deposition testimony in support of their respective positions. The Appellants argued that Cooke was a statutory employee because helicopter transport allows paramedics to reach critically injured patients more quickly than other forms of transportation, and therefore, helicopter service is essential to the Hospital's business of saving lives. The Appellants further argued that Cooke was a borrowed servant of the Hospital because there was a contract for hire, the work Cooke performed benefited the Hospital, and the Hospital had control over Cooke. To illustrate that control, the Appellants' attorney pointed out that Cooke had a uniform and identification tag issued by the Hospital, and the Hospital told Cooke where to pick up and deliver patients.

The Cookes' attorney argued Cooke was not a statutory employee because the Hospital was not in the business of transporting patients, the helicopter service was only a miniscule part of the overall business of the Hospital, and the Hospital and Petroleum Helicopter entered a contract in

which they agreed that pilots were not employees of the Hospital. In regards to the Hospital's borrowed servant argument, the Cookes' attorney pointed out that the Hospital does not decide "if or when the helicopters ever fly," nor does the Hospital have any say in who Petroleum Helicopters hires as pilots.

After hearing arguments, the circuit court judge issued a written order, finding Cooke was not a statutory employee or borrowed servant of the Hospital. In her order, the judge characterized the action as "a motion to dismiss for lack of subject matter jurisdiction," and the last sentence of her order denied "Defendant's Motion to Dismiss." This appeal followed.

STANDARD OF REVIEW

"The determination of whether a worker is a statutory employee is jurisdictional and therefore the question on appeal is one of law." Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (citing Glass v. Dow Chemical Co., 325 S.C. 198, 482 S.E.2d 49 (1997)). Thus, the appellate court reviews the entire record and decides the jurisdictional facts in accord with the preponderance of the evidence. Id.

LAW/ANALYSIS

The Appellants argue the circuit court erred by failing to find Cooke was either a statutory employee or borrowed servant of the Hospital. The Cookes argue, initially, that the order of the circuit court is not immediately appealable. Thus, before delving into the merits of the Appellants' arguments, we first address the threshold issue of appealability.

I. Appealability

An order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. Deskins v. Boltin, 319 S.C. 356, 461 S.E.2d 395 (1995); Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995), *overruled on other grounds by* Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002). However, the issue before the circuit

court was not brought via a motion to dismiss; rather, both parties consented to have a non-jury hearing on the merits of the Hospital's exclusivity defense. Furthermore, pursuant to Sabb v. South Carolina State University, the exclusivity provision of the Workers' Compensation Act does not involve subject matter jurisdiction. 350 S.C. at 423, 567 S.E.2d at 234.

Here, the circuit court held a hearing to determine the merits of the Hospital's exclusivity defense. The circuit court rejected this defense, but the merits of the Cookes' action has yet to be determined. Thus, the circuit court's order is interlocutory.

For an interlocutory order to be appealable, the order must "involve the merits." S.C. Code Ann. § 14-3-330 (1985). To involve the merits, an order '"must finally determine some substantial matter forming the whole or a part of some cause of action or defense . . . ."' Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Here, the circuit court weighed the evidence and concluded that the exclusivity provision did not apply because Cooke was neither a statutory employee nor a borrowed servant of the Hospital. In so holding, the circuit court "finally determined a substantial matter forming a part of the Hospital's defense," and thus, the order is appealable.

II. Statutory Employee

On the merits, the Appellants first argue the trial court erred in failing to find Cooke was a statutory employee of the Hospital. We disagree.

To qualify as a statutory employee under the Workers' Compensation Act, an individual must be engaged in an activity that "is a part of [the employer's] trade, business or occupation." S.C. Code Ann. § 42-1-400 (1985). A particular activity is part of the putative employer's "trade, business or occupation" if it "(1) is an important part of the [employer's] business or trade; (2) is a necessary, essential, and integral part of the [employer's] business; or (3) has previously been performed by the

[employer's] employees." Olmstead v. Shakespeare, 354 S.C. 421, 424, 571 S.E.2d 483, 485 (2003).

We agree with the circuit court's determination that none of these criteria is met. First, as is apparent from its articles of incorporation, the Hospital is in the business of providing health care, not transportation.[2] While air transportation of patients helps facilitate the Hospital's treatment of critically injured patients, that alone does not make transportation an important or essential part of the Hospital's general business. See Abbott v. The Limited, 338 S.C. 161, 163-64, 526 S.E.2d 513, 514 (2000) (holding that a truck driver who delivered goods to a clothing store was not a statutory employee of the store because, even though it was important for the store to receive those goods, the store was in the business of retail sales not transportation). Second, helicopter service is not "necessary, essential, or integral" to the Hospital's operation because less than one percent of the Hospital's patients use the service and the Hospital's emergency room services do not cease when the helicopter cannot fly. Finally, the Hospital did not have an FAA certificate and has never directly employed helicopter pilots. Thus, the preponderance of the evidence supports the circuit court's determination that Cooke was not a statutory employee of the Hospital.

II. Borrowed Servant

The Hospital next argues the circuit court erred in failing to find Cooke was a borrowed servant. We disagree.

Under the borrowed servant doctrine, when a general employer lends an employee to a special employer, that special employer is liable for workers' compensation if: (1) there is a contract of hire between the employee and the special employer; (2) the work being done by the employee is essentially that of the special employer; and (3) the special employer has the right to control the details of the employee's work. Eaddy v. A.J. Metler

[2] According to the Hospital's articles of incorporation, its corporate purpose is to "provid[e] hospital facilities and health care services for inpatient medical care of the sick and injured."

Hauling & Rigging Co., 284 S.C. 270, 272, 325 S.E.2d 581, 582-83 (Ct. App. 1985). While the circuit court found that the first two prongs of the borrowed servant doctrine were met, it found the Hospital did not control the details of Cooke's work, and therefore, the third prong was not satisfied.

When determining whether a special employer has the right to control the details of an employee's work, courts consider the following four factors: "(1) direct evidence of the right to, or exercise of, control; (2) method of payment; (3) furnishings of equipment; and (4) right to fire." Chavis v. Watkins, 256 S.C. 30, 33, 180 S.E.2d 648, 649 (1971). Although the hospital provided Cooke with a helicopter, Cooke was paid by Petroleum Helicopters, which was also charged with hiring (and presumably firing) its pilots. Furthermore, pursuant to the contract between the Hospital and Petroleum Helicopters, "the methods and details" of each flight were not left up to the Hospital. Thus, we agree with the circuit court's determination that Cooke was not the Hospital's borrowed servant.

CONCLUSION

Based on the foregoing, we find Cooke is neither a statutory employee nor a borrowed servant of the Hospital. Accordingly, the circuit court's order resolving the merits of the Hospital's exclusivity defense is

AFFIRMED.

STILWELL and KITTREDGE, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard Aiken, Respondent,

v.

World Finance Corporation of South Carolina and World Acceptance Corporation, Appellants.

Appeal From Laurens County
James W. Johnson, Jr., Circuit Court Judge

Opinion No. 4055
Heard November 9, 2005 – Filed December 12, 2005

AFFIRMED

Judson K. Chapin, III, of Greenville, for Appellants.

Matthew Price Turner and Rhett D. Burney, both of Laurens, for Respondent.

BEATTY, J.: World Finance Corporation of South Carolina and World Acceptance Corporation ("Appellants") appeal the circuit court's order denying their motion to compel arbitration. We affirm.

FACTS

Beginning in October 1997 through late 1999, Richard Aiken entered into a series of consumer loan transactions with Appellants. In conjunction with each of these loan agreements, Aiken signed an arbitration agreement,[1] which provided that the parties agreed to settle all disputes and claims through arbitration.

In late 2002, after Aiken had paid his loan in full, former employees of Appellants used Aiken's personal financial information to illegally procure loans and embezzle the proceeds from those loans.[2] Upon discovering the misuse of his personal information, Aiken filed suit against Appellants seeking a jury trial for damages arising out of the following causes of action: intentional infliction of emotional distress; negligence; negligent hiring/supervision; and unfair trade practices. In response, Appellants denied the allegations and filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, and a motion to compel arbitration.

After a hearing, the circuit court denied Appellants' motions to dismiss and to compel arbitration. In reaching this decision, the court found the creditor/debtor relationship between Appellants and Aiken ended once Aiken satisfied his loan in full. As a result, the court concluded the "effectiveness of the arbitration clause ceased when the relationship of the parties ceased." The court also held the tort claims raised by Aiken were not subject to arbitration because the acts of Appellants' employees were "completely independent of the loan agreement." This appeal followed.

---

[1] Aiken signed several arbitration agreements. However, the only agreements pertinent to this appeal are those executed on February 3, 1999 and July 21, 1999.

[2] The former employees pleaded guilty for these offenses and were sentenced in the United States District Court for the District of South Carolina.