The Supreme Court of South Carolina

In re Dushyant Amish Jethwa (Deceased).

Appellate Case No. 2023-000190

ORDER

On February 3, 2023, Dushyant Amish Jethwa passed away. On February 10, 2023, this Court issued an order appointing Kevin Daniel Mulet, Esquire, as Special Receiver. On February 14, 2023, the personal representative of Mr. Jethwa's estate filed a petition for rehearing requesting that the Court reconsider its order appointing Mr. Mulet as Special Receiver and requesting that Reese Boyd III, Esquire, be substituted as Special Receiver. Mr. Mulet filed a return on February 17, 2023. The personal representative filed a reply on February 23, 2023.

IT IS ORDERED that rehearing is granted and this Court's February 10, 2023 order appointing Mr. Mulet as Special Receiver is hereby vacated. The personal representative's request to substitute Reese Boyd III, Esquire, is denied.

IT IS FURTHER ORDERED that Peyre T. Lumpkin, Esquire, is hereby appointed to assume responsibility for Mr. Jethwa's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Jethwa maintained. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Jethwa's clients. Mr. Lumpkin may make disbursements from and close Mr. Jethwa's trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Jethwa maintained 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 Mr. Jethwa, shall serve as notice to the bank or other financial institution that Peyre T. Lumpkin, 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 Peyre T. Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Jethwa's mail and the authority to direct that Mr. Jethwa's mail be delivered to Mr. Lumpkin's office.

To the extent necessary for Mr. Lumpkin to carry out his appointment, Mr. Mulet and the personal representative of the estate shall communicate and cooperate with Mr. Lumpkin.

s\ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
March 1, 2023

The Supreme Court of South Carolina

In the Matter of Sean Kevin Trundy (Deceased).

Appellate Case No. 2023-000363

ORDER

Pursuant to Rule 31 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR), Commission Counsel has filed a Petition for Appointment of Attorney to Protect Clients' Interests in this matter. The petition is granted.

IT IS ORDERED that Peyre T. Lumpkin, Esquire, is hereby appointed to assume responsibility for Mr. Trundy's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Trundy maintained. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Mr. Trundy's clients. Except as authorized by Rule 31(d)(5), RLDE, Rule 413, SCACR, Mr. Lumpkin may not practice law in any federal, state, or local court, including the entry of an appearance in a court of this State or of the United States. Mr. Lumpkin may make disbursements from and close Mr. Trundy's trust account(s), escrow account(s), operating account(s), and any other law office account(s) Mr. Trundy maintained that are necessary to effectuate this appointment.

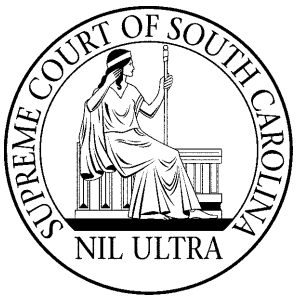
This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Mr. Trundy, shall serve as notice to the bank or other financial institution that Peyre T. Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre T. Lumpkin, Esquire, has been duly appointed by

this Court and has the authority to receive Mr. Trundy's mail and the authority to direct that Mr. Trundy's mail be delivered to Mr. Lumpkin's office.

s\ Donald W. Beatty C.J.
FOR THE COURT

Columbia, South Carolina
March 7, 2023



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 10
March 15, 2023
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Tiffany Jane' Brown, Respondent.

Appellate Case No. 2023-000205

Opinion No. 28139
Submitted February 23, 2023 – Filed March 15, 2023

PUBLIC REPRIMAND

Interim Disciplinary Counsel Ericka M. Williams and
Assistant Disciplinary Counsel Phylicia Y. Coleman,
both of Columbia, for the Office of Disciplinary Counsel.

Tiffany Jane' Brown, of Florence, Pro Se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a confidential admonition, a public reprimand, or a definite suspension of up to six months. We accept the Agreement and issue a public reprimand.

I.

On July 12-13, 2022, during a trial before a family court judge (Judge), Respondent's former client testified that her signature was not the signature purportedly sworn by notary seal on the financial declaration filed with the court. After the trial, Judge reviewed several cases currently pending before the court

wherein Respondent was counsel of record. Of the cases reviewed, Judge observed at least four documents attested by either Respondent or her non-lawyer employee as notary publics that appeared to be fraudulent. Thereafter, Judge met with Respondent and presented the documents of concern. Respondent was candid and remorseful about her actions once approached by Judge.

Respondent promptly self-reported the misconduct, admitting that on more than one occasion, she signed legal documents on behalf of her client(s) and notarized the signature purportedly attesting that her client(s) signed the document. Respondent also admitted that she allowed her employee, a non-lawyer under her direct supervision, to notarize Respondent's signature on behalf of her client(s). Opposing counsel submitted a complaint about the same misconduct. In addition, opposing counsel reported three documents in another case in which Respondent allowed her assistant to notarize signatures that were not of the client.

II.

Respondent admits her conduct violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 3.3(a)(1) (prohibiting false statements of fact to a tribunal); Rule 4.1(a) (prohibiting false statements of fact to a third person); Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct); Rule 8.4(d) (prohibiting conduct involving dishonesty); Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

Respondent also admits her misconduct is grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (providing a violation of the Rules of Professional Conduct is a ground for discipline); and Rule 7(a)(5) (providing conduct tending to bring the legal profession into disrepute is a ground for discipline).

In the Agreement, Respondent admits misconduct, consents to the imposition of a confidential admonition, a public reprimand, or a definite suspension of up to six months, and agrees to pay costs. In her affidavit in mitigation, Respondent acknowledges her wrongdoing, explains that she has learned an important lesson, and notes that since this incident, she has attended several educational programs and availed herself of various South Carolina Bar resources for new attorneys. Respondent also acknowledges the wrongfulness of her conduct and emphasizes that she never intended to "mislead, misrepresent, or defraud anyone."

III.

We find Respondent's misconduct warrants a public reprimand. *See, e.g.*, *In re Robinson*, 393 S.C. 364, 713 S.E.2d 294 (2011) (publicly reprimanding a lawyer for filing affidavits of witnesses with the lawyer's name as notary when the witnesses did not sign the affidavits). Accordingly, we accept the Agreement and publicly reprimand Respondent for her misconduct. Within thirty days, Respondent shall pay the costs incurred in the investigation and prosecution of this matter by the Office of Disciplinary Counsel and the Commission on Lawyer Conduct.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, FEW, JAMES and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Cooper C. Lynn, Respondent.

Appellate Case No. 2023-000028

Opinion No. 28140
Submitted February 23, 2023 – Filed March 15, 2023

DISBARRED

Disciplinary Counsel John S. Nichols and Senior Assistant Disciplinary Counsel Ericka M. Williams, both of Columbia, for the Office of Disciplinary Counsel.

Cooper C. Lynn, of Darlington, 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 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct, consents to disbarment, and agrees to pay restitution and costs. We accept the Agreement and disbar Respondent from the practice of law in this state.

I.

On August 23, 2019, Respondent was placed on interim suspension after he admitted failing to hold unearned fees in trust. *In re Lynn*, 427 S.C. 577, 832 S.E.2d 608 (2019). Formal charges were filed against Respondent on February 10, 2022, alleging misconduct as set forth in eight disciplinary complaints received between 2018 and 2020. In the Agreement, Respondent admits the material facts alleged in the formal charges.

Matter A

Husband and Wife (Clients) gave Respondent $70,000 to settle claims concerning the closure of their South Carolina business. Pursuant to the fee agreement, $10,000 was for legal fees and the remaining $60,000 was for the resolution of pending claims against Clients' company. Respondent failed to timely provide an accounting and a refund of unused funds upon Clients' request in violation of Rule 1.15(d), RPC, Rule 407, SCACR (requiring a lawyer to promptly deliver funds to third parties and promptly render a full accounting upon request by the client or third party). Respondent disputed the amount due to Clients; however, Respondent failed to hold both unearned fees and disputed funds in his trust account as required by Rules 1.15(a) (requiring a lawyer to safeguard and not commingle funds) and 1.15(e), RPC, Rule 407, SCACR (requiring a lawyer to hold disputed property in trust until the dispute is resolved).[1]

On January 31, 2019, Clients filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code. The bankruptcy trustee (Trustee) asserted that up to $56,000 of the disputed funds that Respondent received from Clients belonged to Clients' bankruptcy estate and should be paid to Trustee. In an effort to avoid litigation, Respondent and Trustee agreed that Respondent would pay Trustee a total of $12,000 in equal installments of $500 per month beginning on October 1, 2019. Respondent failed to make any of the agreed payments.

In addition to the above-cited rules, Respondent admits his conduct in this matter also violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct) and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice). In the Agreement, Respondent agrees to pay $12,000 in restitution to Clients.

[1] Although not referenced in the Agreement or formal charges, we observe Respondent's failure to hold unearned fees in trust in this matter also likely violated Rule 1.15(c) RPC, Rule 407, SCACR, which requires unearned fees to be held in trust absent a written agreement under Rule 1.5(f), RPC, treating the fees as immediately earned.

Matter B

Respondent represented Client B in a domestic matter. At times during the representation, Respondent failed to adequately communicate with Client B regarding the status of the case. Specifically, between August 2018 and November 2018, Client B made repeated reasonable requests for a status update, but Respondent did not provide any response until December 10, 2018, and that response was incomplete. Respondent admits his actions in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.4 (requiring a lawyer to keep the client reasonably informed about the status of the matter and requiring prompt compliance with reasonable requests for information); and Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct).

Matter C

Respondent engaged a law firm to assist him with representing Client C in a medical malpractice action. On February 22, 2016, a settlement in the medical malpractice action was approved, allocating $300,000 to a wrongful death claim and $50,000 to a survival claim. After all attorneys' fees and costs were disbursed, Respondent received $175,607.95 from the assisting law firm as net settlement proceeds due to Client C for both the wrongful death and the survival claim. Respondent returned $4,823.31 of that amount to the assisting law firm to satisfy a Medicaid lien and then issued a check to Client C in the amount of $120,784.64. Respondent retained the $50,000 allocated to the survival action and informed Client C that the proceeds would be disbursed in a separate probate action.

Respondent failed to diligently pursue the probate action in violation of Rule 1.3, RPC, Rule 407, SCACR (requiring a lawyer to diligently pursue a client's cause). Respondent failed to disburse the $50,000 allocated to the survival action to Client C or to the probate court in violation of Rule 1.15(d), RPC, Rule 407, SCACR (requiring prompt delivery of funds held in trust). Respondent admits that, instead, he misappropriated the $50,000 for his personal use in violation of the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15(a) (requiring a lawyer to safekeep funds held in trust); Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct); Rule 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer); Rule 8.4(d) (prohibiting conduct involving dishonesty, fraud, deceit, or

misrepresentation); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

After formal charges were filed against Respondent, Client C recovered $40,000 from the Lawyers' Fund for Client Protection as reimbursement for losses caused by Respondent's dishonest conduct. *See* Rule 411(c)(1), SCACR (limiting the recovery of each applicant to $40,000). In the Agreement, Respondent agrees to pay restitution in the amount of $10,000 to Client C.

Matter D

Respondent represented Client D in a domestic matter. Respondent failed to adequately communicate with Client D regarding the status of the case. Specifically, Client D attempted for over a month to contact Respondent by email or telephone call to obtain a status update, but Respondent did not respond and his voice mailbox was full. Respondent admits his failure to communicate with Client D violated Rule 1.4, RPC, Rule 407, SCACR (requiring a lawyer to keep the client reasonably informed about the status of the matter and requiring prompt compliance with reasonable requests for information). Respondent also admits he failed to diligently pursue Client D's action in violation of Rule 1.3, RPC, Rule 407, SCACR (requiring a lawyer to diligently pursue a client's cause). Further, Respondent admits that following his interim suspension on August 23, 2019, he failed to refund unearned fees to Client D in violation of Rule 1.16(d), RPC, Rule 407, SCACR (requiring that upon termination of representation, a lawyer must refund payment of any unearned fee or expense that has not been incurred).

Matter E

Client E retained Respondent in 2014 to represent him in a civil action. Client E died in 2016, and his wife was appointed personal representative of the estate. On April 16, 2019, Respondent received a settlement check in the amount of $30,000. Respondent failed to disburse the settlement funds to the probate court or to Client E's estate in violation of Rule 1.15(d), RPC, Rule 407, SCACR (requiring prompt delivery of funds held in trust). Rather, Respondent admits he misappropriated the settlement funds for his own use in violation of the following Rules of Professional Conduct: Rule 1.15(a) (requiring a lawyer to safekeep funds held in trust); Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct); Rule 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty,

trustworthiness, or fitness as a lawyer); Rule 8.4(d) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

Matter F

Respondent represented Client F regarding the estate of his deceased mother. Respondent and Client F executed a fee agreement in July 2014, providing for the retainer fee of $5,000 with an hourly rate of $200 to be billed against that retainer fee. When the issues in the case became more complicated than originally contemplated, Respondent and Client F executed a second fee agreement for the payment of an additional $2,000 retainer at the same hourly rate. Respondent failed to retain $1,229.24 in unearned fees in his trust account in violation of Rule 1.15(a), RPC, Rule 407, SCACR (requiring a lawyer to safekeep funds held in trust).[2] After having retained Respondent in July 2014, Client F learned in October 2019 that Respondent had failed to diligently pursue Client F's matter in violation of Rule 1.3, RPC, Rule 407, SCACR (requiring a lawyer to diligently pursue a client's cause).

Respondent was also in possession of $22,639.78 received from the decedent's checking account and approximately $45,000 from the sale of the decedent's residence. Respondent failed to disburse any of these estate funds to the probate court or to the beneficiaries of the estate in violation of Rule 1.15(d), RPC, Rule 407, SCACR (requiring prompt delivery of funds held in trust). Rather, Respondent admits he misappropriated the funds for his own use in violation of the following Rules of Professional Conduct: Rule 1.15(a) (requiring a lawyer to safekeep funds held in trust); Rule 8.4(a) (prohibiting violations of the Rules of Professional Conduct); Rule 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer); Rule 8.4(d) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice).

[2] Again, though not referenced in the Agreement or formal charges, we observe Respondent's failure to hold unearned fees in trust in this matter also likely violated Rule 1.15(c) RPC, Rule 407, SCACR, which requires unearned fees to be held in trust absent a written agreement under Rule 1.5(f), RPC, treating the fees as immediately earned.

On October 22, 2019, ODC mailed Respondent a notice of investigation requesting a response within fifteen days. On November 26, 2019, ODC sent Respondent a letter pursuant to *In re Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982), reminding Respondent that his response was overdue. Respondent did not submit a response until November 30, 2020—more than a year after it was due. Respondent admits his failure to timely respond to the notice of investigation violated Rule 8.1(b), RPC, Rule 407, SCACR (prohibiting a lawyer from knowingly failing to respond to an ODC inquiry).

Matter G

Respondent represented Client G in a domestic matter. Respondent failed to adequately communicate with Client G about the status of the case. Specifically, between February 2018 and August 2019, Client G attempted to contact Respondent for reasonable updates on the matter but received no response. Respondent admits his failure to communicate with Client G violated Rule 1.4, RPC, Rule 407, SCACR (requiring a lawyer to keep the client reasonably informed about the status of the matter and requiring prompt compliance with reasonable requests for information).

Additionally, the family court ruled in Client G's favor in February 2018, but as of August 2019, Respondent had not provided a proposed order for the family court. Respondent admits he failed to diligently pursue Client G's matter in violation of Rule 1.3, RPC, Rule 407, SCACR (requiring a lawyer to diligently pursue a client's cause).

On January 9, 2020, ODC mailed Respondent a notice of investigation requesting a response within fifteen days. On February 5, 2020, ODC sent Respondent a *Treacy* letter reminding Respondent that his response was overdue. Respondent did not submit a response until May 21, 2020. Respondent admits his failure to timely respond to the notice of investigation violated Rule 8.1(b), RPC, Rule 407, SCACR (prohibiting a lawyer from knowingly failing to respond to an ODC inquiry).

Matter H

Respondent represented Client H in a domestic matter. After Client H engaged Respondent in December 2018, there was limited contact with Respondent, and

after March 2019, Respondent failed to respond at all to any of Client H's reasonable requests for information. Respondent admits his conduct violated Rule 1.4, RPC, Rule 407, SCACR (requiring prompt compliance with reasonable requests for information). Further, as of August 2019, Respondent had done little to no work on Client H's matter, and Client H had to hire new counsel. Respondent admits he failed to diligently pursue Client H's matter in violation of Rule 1.3, RPC, Rule 407, SCACR (requiring a lawyer to diligently pursue a client's cause).

On January 15, 2020, ODC mailed Respondent a notice of investigation requesting a response within fifteen days. On February 7, 2020, ODC sent Respondent a *Treacy* letter reminding Respondent that his response was overdue. Respondent did not submit a response until May 21, 2020. Respondent admits his failure to timely respond to the notice of investigation violated Rule 8.1(b), RPC, Rule 407, SCACR (prohibiting a lawyer from knowingly failing to respond to an ODC inquiry).

II.

Respondent admits his misconduct as set forth above is grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (providing a violation of the Rules of Professional Conduct is a ground for discipline); Rule 7(a)(3) (providing a knowing failure to respond to an ODC inquiry is a ground for discipline); Rule 7(a)(5) (providing conduct demonstrating an unfitness to practice law is a ground for discipline); and Rule 7(a)(6) (providing a violation of the Lawyers' Oath is a ground for discipline). *See* Rule 402(h)(3), SCACR (requiring faithfulness, competence, diligence, good judgment, and prompt communication of all lawyers licensed to practice in South Carolina).

In the Agreement, Respondent consents to disbarment and requests that it be imposed retroactively to the date of his interim suspension on August 23, 2019. As a condition of discipline, Respondent also agrees to pay costs, as well as $12,000 in restitution to Clients in Matter A, $10,000 in restitution to Client C, and $133,960 to reimburse the Lawyers' Fund for Client Protection for sums paid on Respondent's behalf. Prior to seeking readmission, Respondent agrees to attend the Legal Ethics and Practice Program Ethics School and Trust Account School. Respondent presented no evidence in mitigation of his misconduct.

On December 8, 2022, this matter was submitted to a hearing panel of the Commission on Lawyer Conduct, which unanimously recommended that the Court accept the Agreement and disbar Respondent retroactive to the date of his interim suspension.

III.

"This Court has never regarded financial misconduct lightly, particularly when such misconduct concerns expenditure of client funds or other improper use of trust funds." *In re Wern*, 431 S.C. 643, 649, 849 S.E.2d 898, 901 (2020) (citation omitted) (disbarring an attorney for misappropriating trust account funds). In light of Respondent's admitted pattern of financial misconduct and client neglect, we find disbarment is the appropriate sanction. *See In re Locklair*, 418 S.C. 467, 795 S.E.2d 9 (2016) (disbarring an attorney for failing to communicate with clients, failing to handle client matters diligently, and misappropriating funds that should have been held in trust).

Accordingly, we accept the Agreement and disbar Respondent from the practice of law in this state, retroactive to his interim suspension on August 23, 2019. Within thirty days of the date of this opinion, Respondent shall enter into an agreement with the Commission on Lawyer Conduct to pay: (1) $12,000 in restitution to Clients in Matter A; (2) $10,000 in restitution to Client C; (3) $133,906.55 to the Lawyers' Fund for Client Protection; and (4) the costs incurred in the investigation and prosecution of this matter by ODC and the Commission. Within fifteen days of the date of this opinion, Respondent shall surrender his Certificate of Admission to the Practice of Law to the Clerk of this Court. Prior to seeking readmission, Respondent must attend the Legal Ethics and Practice Program Ethics School and Trust Account School.

DISBARRED.

BEATTY, C.J., KITTREDGE, FEW, JAMES and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Randall DeWitt Williams, Respondent

Appellate Case No. 2023-000201

Opinion No. 28141
Submitted February 23, 2023 – Filed March 15, 2023

DEFINITE SUSPENSION

Assistant Disciplinary Counsel Kelly B. Arnold and Assistant Disciplinary Counsel Jeffrey I. Silverberg, both of Columbia, for the Office of Disciplinary Counsel.

Peter Demos Protopapas and George Michael Pappas, Jr., both of Rikard & Protopapas, LLC of Columbia, for Respondent.

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 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a confidential admonition, a public reprimand, or a definite suspension of up to ninety-days and agrees to pay costs. We accept the Agreement and suspend Respondent from the practice of law in this state for ninety days.

I.

On July 30, 2021, Respondent was charged with four misdemeanor counts of failing to pay state income tax and file state income tax returns for the 2015, 2016, 2017, and 2018 tax years. Respondent timely self-reported his misconduct to

ODC. The total unpaid tax amount was $14,165. Following his arrest, Respondent filed all outstanding tax returns and paid the taxes owed. On January 18, 2023, Respondent entered a guilty plea to one misdemeanor count of failing to pay state income tax and file a return. *See* S.C. Code Ann. § 12-54-44(B)(3) (providing a person who "wilfully fails to pay any estimated tax . . . and who wilfully fails to make a return" is guilty of a misdemeanor). Respondent was fined $125 and sentenced to time served without probation. Respondent paid the fine on January 23, 2023, successfully completing all conditions of his sentence.

II.

Respondent admits that his conduct violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 8.4(b) (prohibiting a crime that reflects adversely on fitness as a lawyer); and Rule 8.4(e) (prohibiting conduct prejudicial to the administration of justice). Respondent also admits his conduct is grounds for discipline under the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (providing a violation of the Rules of Professional Conduct is a ground for discipline); Rule 7(a)(4) (providing conviction of a serious crime is a ground for discipline)[1]; and Rule 7(a)(5) (providing conduct tending to bring the legal profession into disrepute or conduct demonstrating unfitness to practice law is a ground for discipline). Respondent agrees to the imposition of a confidential admonition, public reprimand, or definite suspension up to nine months and agrees to pay costs.

In his affidavit in mitigation, Respondent explains that beginning in 2012, his mother's mental and physical health began to deteriorate as her Alzheimer's disease progressed. Respondent became healthcare power of attorney for both his aging parents and cared for their needs as best he could while maintaining a busy legal practice. Respondent admits he turned to alcohol "as an escape" and that he had become dependent on alcohol during the period of time in which he neglected his tax responsibilities. Respondent's mother passed away in 2018.

Respondent has been sober since October 29, 2019, when he entered a six-week inpatient treatment program in Texas. Since completing inpatient treatment, Respondent continues to regularly attend AA meetings and entered into a one-year

[1] *See* Rule 2(bb), RLDE, Rule 413, SCACR (defining a "serious crime" as including the "willful failure to file income tax returns").

monitoring contract with LHL in August 2021. Respondent also serves as a mentor to others in recovery, including through AA and speaking to others not only at events in South Carolina but also at the facility in Texas where he received inpatient treatment. Respondent has also developed a faith-based approach to overcoming conflict and enhancing mental and emotional well-being, and he has attended a program focused on restorative practices to resolve conflict.

III.

We hereby accept the Agreement. Although we are sympathetic to Respondent's personal difficulties, we find a definite suspension is warranted. *See, e.g.*, *In re Ellerbe*, 384 S.C. 418, 682 S.E.2d 487 (2009) (imposing a ninety-day suspension for failure to file tax returns); *In re Thornton*, 340 S.C. 392, 532 S.E.2d 282 (2000) (imposing a ninety-day suspension for failure to file tax return); *In re Chastain*, 327 S.C. 173, 488 S.E.2d 878 (1997) (imposing a ninety-day suspension for failure to file state income tax returns for several years). Accordingly, we suspend Respondent from the practice of law in this state for a period of ninety days.

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. Within thirty days, Respondent shall pay the costs incurred in the investigation and prosecution of this matter by Disciplinary Counsel and the Commission on Lawyer Conduct.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, FEW, JAMES and HILL, JJ., concur.

The Supreme Court of South Carolina

Re: Amendment to Rule 5.5, South Carolina Rules of Professional Conduct, Rule 407, South Carolina Appellate Court Rules

Appellate Case No. 2022-001182

ORDER

The South Carolina Bar has proposed amending Comment 4 to Rule 5.5 of the South Carolina Rules of Professional Conduct, which are found in Rule 407 of the South Carolina Appellate Court Rules. The Bar's petition indicates the proposed amendment is intended to allow lawyers licensed in other jurisdictions to work remotely in South Carolina.

Pursuant to Article V, § 4 of the South Carolina Constitution, we adopt a modified version of the Bar's proposed amendment. The amendment, which is effective immediately, adds the following sentence to the end of Comment 4:

> A lawyer admitted in another jurisdiction does not establish an office or other systematic presence in this jurisdiction for the practice of law by engaging in remote work in this jurisdiction, provided the lawyer's legal services are limited to services the lawyer is authorized to perform by a jurisdiction in which the lawyer is admitted, and the lawyer does not state, imply, or hold out to the public that the lawyer is a South Carolina lawyer or is admitted to practice law in South Carolina.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
March 15, 2023

The Supreme Court of South Carolina

Re: Amendments to Rule 607, South Carolina Appellate Court Rules

Appellate Case No. 2022-001461

ORDER

South Carolina Court Administration has proposed a number of amendments to Rule 607 of the South Carolina Appellate Court Rules (SCACR), concerning court reporter transcripts in the circuit and family courts. These amendments eliminate fees for transcripts sent by email, and instead allow for fees for transcripts sent by U.S. mail; alter the fee schedule to eliminate references to antiquated technology and to include references to new methods of capturing the record and producing transcripts; and clarify language setting forth the time period a court reporter must retain primary and backup recordings.

Pursuant to Article V, Section 4 of the South Carolina Constitution, Rule 607, SCACR, is amended as set forth in the attachment to this order. These amendments are effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
March 15, 2023

RULE 607
COURT REPORTER TRANSCRIPTS AND RECORDINGS

(a) Applicability. This rule is applicable to court reporter transcripts and recordings relating to proceedings before the family and circuit court, to include proceedings before masters-in-equity. A court reporter or transcriptionist for such a proceeding, regardless whether the court reporter or transcriptionist is a Judicial Branch employee or contractor, or is a private court reporter retained by the parties, shall comply with the requirements of this rule.

(b) Ordering Transcripts. Transcripts of proceedings which are needed for an appeal or appellate review of a post-conviction relief action before the Supreme Court or Court of Appeals shall be ordered as provided by Rules 207(a) or 243(b), SCACR. In all other cases, the request for the transcript shall be made, in writing, to the court reporter, and a copy of the request shall be served as provided by Rule 262(b), SCACR, on all parties to the proceeding which is to be transcribed and, if the transcript is requested for use in another case, on all parties in that case. A copy of the request shall also be provided to the Office of Court Administration. If the request is made by an attorney, the attorney shall provide copies of all correspondence via electronic means as specified in Rule 207(a)(7) and by Order of the Supreme Court.[1] The names and addresses of all persons who are to be served with a copy shall be included on the request for the transcript. The court reporter must acknowledge receipt of the request by responding to the person making the request within five business days, and provide a copy to the Office of Court Administration as specified in Rule 207(a)(7) and by Order of the Supreme Court.

(c) Preparation of Transcript. The transcript shall be prepared in the manner prescribed by the Court Reporters Manual published by the Office of Court Administration.

(d) Delivery of Transcripts. A court reporter shall transcribe and deliver the transcript no later than sixty (60) days after the date of the request. Records shall be transcribed by the court reporter in the order in which the requests for transcripts are made; provided, however, that requests to transcribe post-conviction

[1] The Supreme Court's May 1, 2018 Order specifying this procedure is available at: https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2018-05-01-04.

relief proceedings challenging a sentence of death shall be given priority as provided by S.C. Code Ann. § 17-27-160(E).

(e) Extension of Time to Deliver. If a court reporter anticipates continuous engagement in the performance of other official duties which make it impossible to prepare a transcript within the time specified in (d) above, the reporter shall promptly notify the Office of Court Administration by submitting a Court-approved Notice of Request for Extension form. The Office of Court Administration may grant up to three extensions for a total of up to ninety (90) days. Extensions in excess of ninety days (90) days shall not be allowed except by order of the Chief Justice.

(f) Notice of Extension. Upon the granting of any extension of time for delivery of the transcript, the Office of Court Administration shall notify the parties and, if the transcript has been requested for an appeal or other proceeding before the Supreme Court or the Court of Appeals, the Clerk of that Court.

(g) Failure to Receive Transcript. If the requesting party has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, the requesting party shall notify, in writing, the Office of Court Administration, the court reporter and, if the transcript has been requested for an appeal or other proceeding before the Supreme Court or the Court of Appeals, the Clerk of that Court. If the request was made by an attorney, the attorney shall also provide notice via electronic means as provided in Rule 207(a)(7) and by Order of the Supreme Court.

(h) Fees for Transcription and Other Services.

> **(1) By Judicial Branch Court Reporter.** A court reporter or transcriptionist employed by, contracted by, or otherwise acting on behalf of or at the direction of the Judicial Branch shall receive the following fees:
>
> > **(A)** A fee of Four Dollars and Twenty-Five Cents ($4.25) per page for producing an original transcript.
> >
> > **(B)** A fee of One Dollar ($1.00) per page for furnishing a copy of a previously prepared transcript.

(C) A fee of Two Dollars ($2.00) per page for each person receiving Real-time output when a Real-time Request is signed by the requestor.

(D) A fee of One Dollar and Fifty Cents ($1.50) per page for condensed transcripts, which contain no more than four pages of text. This service is only available to a requestor who has requested an original or a copy of the transcript.

(E) A fee of One Dollar ($1.00) per page for Keyword Indexing. This service is only available to a requestor who has requested an original or a copy of the transcript.

(F) A fee of Fifty Dollars ($50) plus shipping costs for mailed transcripts. This service is only available to a requestor who has requested an original or a copy of the transcript.

(G) A fee of Two Dollars ($2.00) per page for unedited (rough draft) transcripts.

(H) The following per page costs apply to requests to produce a transcript on an expedited basis:

(i) A fee of Five Dollars ($5.00) for original transcripts delivered within seven days of the request and One Dollar ($1.00) for a copy.

(ii) A fee of Six Dollars ($6.00) for original transcripts delivered overnight and One Dollar and Twenty-Five Cents ($1.25) for a copy.

(iii) A fee of Seven Dollars ($7.00) for original transcripts delivered on a daily basis and One Dollar and Twenty-Five Cents ($1.25) for a copy.

(2) By Private Court Reporter. In the event a court reporter is retained by the parties and is not a Judicial Branch court reporter, the fees to be charged shall be agreed upon by the private court reporter and the parties. Where a

Judicial Branch court reporter or transcriptionist also produces a transcript for a proceeding, the transcript produced by the Judicial Branch court reporter or transcriptionist is the official transcript.

(i) Retention of Recordings.

(1) Five Years from Proceeding. A court reporter must retain the primary and backup recordings of a proceeding for at least five (5) years after the date of the proceeding before destroying or deleting any recordings. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial.

(2) One year from Transcription. A court reporter must also retain the primary and backup recordings from a proceeding that has been transcribed for at least one (1) year after the original transcript is sent to the requesting party, even if this results in the reporter retaining the recordings longer than five (5) years, to allow a party to challenge the accuracy of the transcription.

(j) Failure to Comply. The willful failure of a court reporter to comply with the provisions of this Rule shall constitute contempt of court enforceable by order of the Supreme Court.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard J. Hook, Respondent,

v.

South Carolina Department of Health and Environmental Control and Phillip Patterson,

Of Which South Carolina Department of Health and Environmental Control is the Appellant and Phillip Patterson is the Respondent.

Appellate Case No. 2019-001282

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Opinion No. 5973
Heard June 16, 2022 – Filed March 15, 2023

REVERSED

Bradley David Churdar, of Charleston, for Appellant.

Mary Duncan Shahid and Angelica M. Colwell, both of Nexsen Pruet, LLC, of Charleston, for Respondent Richard J. Hook.

Phillip Patterson, of Charleston, pro se.

KONDUROS, J.: The South Carolina Department of Health and Environmental Control (DHEC) appeals the administrative law court (ALC) holding it in contempt for failing to comply with a consent order. DHEC contends the ALC erred because its failure was not willful. It also asserts the ALC erred by awarding compensation to a party who was not a complainant. It further contends the ALC ignored the exclusive remedy provision of the South Carolina Torts Claims Act (SCTCA). We reverse.

FACTS/PROCEDURAL HISTORY

Ford Development Company (Ford) developed a subdivision, Belle Terre, on James Island. The subdivision was adjacent to a tidal creek known as Parrot Creek. DHEC's Office of Ocean and Coastal Resources Management (OCRM) approved a dock master plan (DMP) in March of 2002. In July 2002, Ford applied to OCRM for a general permit for the construction of a dock for each of the twenty-seven waterfront lots in the subdivision. The application depicted the dock for lot 9 (the Dock) as emanating straight from the property and was 556[1] feet long and was completely within lot 9's extended property lines.

On August 21, 2002, Richard J. Hook executed an agreement to purchase lot 10 in the subdivision for $1 million. Lot 10 was adjacent to lot 9.

On January 21, 2003, OCRM issued the general permit authorizing the construction of the docks.[2] In its approval of the permit, OCRM changed the trajectory of the Dock stating, the "dock will angle to Parrot Creek rather than extend straight from upland property thereby reducing the walkway length from 595 ' to 200'." Ford did not file an appeal to any aspect of the permit, including changing the angle of the Dock.

The James Island Public Service District (the District) as well as several homeowners in a subdivision that was also adjacent to Parrot Creek filed an appeal of the permit issued. Following a hearing, the District withdrew its appeal after reaching a settlement with Ford and DHEC. On November 13, 2003, the ALC issued an order affirming the permits. The homeowners appealed that order to the

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[1] The record provides the length of the Dock as 556 feet in some places and as 595 feet at others. The difference in the length has no bearing on this appeal.
[2] Each dock was given its own permit number.

South Carolina Coastal Zone Management Appellate Panel (CZMAP)[3] as to the docks on lots 12 through 23.[4] The CZMAP affirmed the order on May 28, 2004.

Hook informed Ford he did not wish to purchase lot 10 unless the Dock was in the position Ford had originally submitted to OCRM, which was straight out instead of crossing in front of lot 10. On August 13, 2004, Ford sought to modify the permit for the Dock because it asserted the Dock crossed the back lot line of lot 10 and obstructed the view of lot 10. On December 13, 2004, OCRM denied Ford's request "to realign and extend the previously authorized dock." OCRM stated "the currently permitted location was specifically authorized at the least damaging environmental alignment," which it asserted it was required to consider. It provided it interpreted its regulation as indicating a shorter dock is better. Also, it noted the current alignment of the Dock was within the approved dock corridor. It indicated Ford's requested amendment was not consistent with its regulations because the amendment was not "in keeping with the spirit of the original [DMP]." OCRM further noted that moving the Dock would not improve navigation. OCRM stated it believed the only possible reason to move the Dock was "to move it away from lot 10" but that the use of the Dock would be identical in either position. OCRM noted it is "to consider how the proposed use could affect the value and enjoyment a person (or persons) may derive with the property in this situation" but not "to consider perceived devaluation of property." However, OCRM noted "this would be difficult to answer since the developer still retains ownership of the lot."

On January 5, 2005, Ford filed a contested case appealing OCRM's denial of Ford's application to amend the permit. On January 12, 2005, Hook closed on the purchase of lot 10 from Ford. According to Hook, he closed on the purchase only after being advised by Ford that it had reached a settlement with DHEC to amend the permit for the Dock.

Ford and OCRM resolved the issues between them, and Ford filed a motion for a consent order of dismissal with consent of DHEC. The ALC filed a consent order (Consent Order) on February 9, 2005. The Consent Order stated, "OCRM's

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[3] "The review procedure under the Administrative Procedures Act was changed by 2006 South Carolina Laws Act No. 387, which eliminated the review of the AL[C]'s determination by the [CZMAP]." *Brownlee v. S.C. Dep't of Health & Env't Control*, 382 S.C. 129, 136 n.5, 676 S.E.2d 116, 120 n.5 (2009).

[4] These lots are not the subject of this appeal.

reasons for denial included its staff's concerns related to the precedent of amendments to the General Permit, in light of the fact that the General Permit was the subject of a protracted contested case appeal . . . ." The Consent Order noted "the General Permit, the Final Order and Decision of the [ALC], and the Final Administrative Order of the [CZMAP] made no mention of OCRM's intent to limit amendments to the General Permit."

Their agreement between the parties was set forth as follows:

> 1. OCRM authorizes amendment of [the permit for the Dock] . . . . A drawing depicting this amendment request is attached . . . .
> 2. Ford . . . agrees to adhere to the terms and conditions of the General Permit and to seek no further amendments to this Permit, with the exception of amendment requests seeking construction of handrails, boatlifts, or roofs at individual docks.
> 3. OCRM agrees to accept applications for requests to amend docks permitted at Belle Terre in accordance with the General Permit, provided that those applications are limited to individual requests for the installation and construction of handrails, roofs, or boatlifts. No other permit amendment requests will be accepted for processing by OCRM unless the applicant can demonstrate either 1) material and substantial changes to Parrot Creek or the Belle Terre property since the time of issuance of the General Permit or 2) consistency with the spirit and intent of the original General Permit. The spirit and intent of the original General Permit was to reduce the potential for adverse cumulative impacts arising from the construction of 27 docks on Parrot Creek and any request that contravenes OCRM's efforts to reduce cumulative impacts will not be accepted or considered by OCRM.
> 4. The parties understand that this agreement may not be considered binding on Ford's successors in title to lots at Belle Terre. Therefore, Ford has executed a "First Amendment to Declaration of Covenants, Conditions and

> Restrictions for Belle Terre[]" . . . . This First Amendment provides all subsequent lot purchasers notice of OCRM's intentions with regard to future permit amendments.
> 5. The parties further agree that the terms and conditions of this Consent Order be incorporated, by reference, into the Special Conditions enumerated on the General Permit.

In the Consent Order, the ALC ordered:

> 1. That [the permit for the Dock] be amended as indicated in the drawing attached . . . and[]
> 2. That the General Permit issued to Ford . . . for construction of 27 docks at the waterfront development known as Belle Terre be amended through incorporation by reference of the terms and conditions of this Consent Order.

Through a string of transfers unrelated to this case, Jessica Patterson became owner of lot 9 and the permit for the Dock was transferred to her. On July 25, 2012, Jessica gave her husband, Phillip Brent Patterson (Patterson), an ownership interest in the lot.

On August 29, 2014, Patterson submitted a request with OCRM to add a roof to the pierhead and a 12.5-foot-by-12.5-foot four-pile boat lift. In the request, he listed Hook as one of his adjacent property owners and provided Hook's home address in Lexington. According to DHEC, the request provided survey drawings depicting the Dock at the angled 200-foot trajectory shown in the January 31, 2003 DMP general permit. On September 8, 2014, OCRM mailed a public notice of the permit amendment request to Hook at the Lexington address. The notice stated: "Plans depicting the proposed work are available and will be provided upon receipt of written request or may be viewed on [DHEC's] website at: http://www.scdhec.gov/Apps/Environment/PublicNotices." According to Hook, he has no recollection of receiving the notice.

In October of 2014, OCRM granted Patterson's request to amend the permit to authorize his requests[5] and issued a construction authorization on October 30. Construction of the Dock began in November of 2014. OCRM performed an inspection on December 30, 2014, stating it was an "As-Built drawing inspection." The drawings showed the planned walkway of the Dock extending at an angle in front of lot 10, as originally shown in the permit approved by OCRM in 2003 and not the direction agreed to in the 2005 Consent Order. The construction was completed at the end of 2014.

In early 2017, Hook was inspecting his lot, which he had not developed since purchasing, and according to him, observed the Dock for the first time.

On March 17, 2017, Hook sent a letter to the ALC stating:

> On February 9, 2005, this [c]ourt issued an order . . . determining the location of a dock for Lot 9 in the subdivision. It appears that sometime after the date of the order, DHEC issued a dock permit for a dock in a location other than provided in the order. The dock was constructed in violation of the court's order. The illegal construction of the dock has destroyed my peaceful enjoyment of my lot. The original placement of the dock in the original Master Plan submitted for the Belle Terre Subdivision was straight out from Lot 9. The above referenced Court Order affirmed the dock for Lot 9 was to be kept in that location, which was straight out. The new location detracts from my property all of which happened without any notice to me. Upon discovering the issuance of a dock permit and construction of the dock, l am requesting this court to enforce its order and require DHEC to revoke the permit and require the removal of the dock which is in violation of the order of this court and reconstructed as ordered in the Court Order.

[5] DHEC asserts the project manager assigned to process the amendment request was not aware of the Consent Order.

On March 30, 2017, Hook filed a request for a contested case hearing with the ALC.[6] On June 23, 2017, Hook filed a prehearing statement with the ALC, stating the "[n]ature of the proceeding" was a "[r]equest for the [ALC] to enforce the" Consent Order. It stated DHEC did not execute the Consent Order and as a result, the permit was issued and the Dock was constructed improperly.

On October 17, 2017, Hook filed an amended prehearing statement.[7] The statement indicated Hook was seeking enforcement of the Consent Order and attorney's fees assessed against DHEC for its disregard of the Consent Order. The statement also provided Hook would move for an order to enforce the Consent Order. Hook argued DHEC was charged with knowledge of the Consent Order as a party to it. Hook asserted:

> By its own terms, the [Consent] Order required replacement of drawings of the original permit with drawings that were attached to the Order. The entire Consent Order, or at least the drawings, should have been appended to the permit in [DHEC's] permitting file immediately upon execution of the Consent Order by the parties. This would have ensured that the correct drawings were transmitted to any third party who possessed the permit after 2005.

Hook's attorneys "concluded that the appropriate posture" for this case was "a Motion to Enforce the Consent Order" and suggested the case be transferred to the ALC judge who decided the 2003 permitting case and entered the 2005 Consent Order.[8]

On October 20, 2017, Hook filed a motion to enforce the Consent Order. In it, Hook sought enforcement of the Consent Order and attorney's fees assessed against DHEC. Hook argued:

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[6] The request indicated Hook was not represented by an attorney.

[7] After filing his request for a contested case hearing and first prehearing statement, Hook retained attorneys, who filed the amended statement.

[8] The case was not transferred.

> If the Consent Order is enforced, the permit issued to . . . Patterson must be voided and/or revoked. The existing dock must be removed and replaced with a dock constructed in accordance with the Consent Order. The financial responsibility for tearing down and replacing the dock at Lot 9 may rest with [DHEC] since [DHEC] was negligent in executing its duty to . . . Patterson and [Hook]. Additionally, [Hook] requests that this [c]ourt award attorney's fees to [him].

On November 10, 2017, Patterson[9] filed a return to Hook's motion to enforce the Consent Order. In it, he asserted that on June 14, 2014, he acquired from DHEC a copy of the permit for the Dock that showed the angled alignment with the 200-foot walkway. Patterson argued Hook had provided no evidence the value of his lot was diminished by the Dock. Patterson also questioned whether the Consent Order was valid or enforceable. Patterson contended, "The parties to that Order were DHEC and Ford and related to the location of a dock that had already been subject to adjudication in a prior action to which Ford and DHEC had been parties." Patterson therefore asserted, "*Res judicata* would appear to preclude Ford and DHEC from re-litigating the location of the docks." Patterson also noted that collateral estoppel possibly barred Hook from enforcing the Consent Order. Patterson further asserted Hook lacked standing to enforce the Consent Order because he was not party to it.

On November 13, 2017, DHEC filed a return to the motion to enforce the Consent Order. DHEC stated the project manager who processed Patterson's 2014 request to amend his permit was unaware of the Consent Order. It indicated "[n]ew internal office procedures have been put in place to prevent similar occurrences." DHEC requested the ALC allow the Dock to remain in place as constructed under Rule 60(b)(5), SCRCP.[10] It contended Hook's "actions demonstrate[d] an inconsistent effort to protect his view corridor that is not even a prescriptive right under South Carolina law." DHEC also asserted that to the extent the motion to

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[9] Patterson was represented by counsel at this time.

[10] Rule 60(b)(5), SCRCP, provides, "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding . . . [if] it is no longer equitable that the judgment should have prospective application."

enforce the Consent Order was actually a negligence claim against DHEC, the action belonged in the circuit court.

On November 17, 2017, Hook filed a reply to both DHEC's and Patterson's returns. In it, Hook asserted DHEC's Rule 60(b)(5) motion was filed too late to be included in the hearing scheduled for December 6, 2017, because SCALC Rule 19A required all motions be filed thirty days prior to the hearing date. On the merits of the motion, Hook argued the Consent Order did not have prospective application and even if it did, equity did not support setting it aside. Hook also maintained res judicata and collateral estoppel should not bar his action because they were not raised at the time of the Consent Order and the issue of the Dock being 595 feet was not litigated in 2003. Hook contended Ford voluntarily changed the DMP, after it submitted it to DHEC for approval and while it was under review, to modify the placement and length of the Dock from 595 feet to 200 feet. Hook asserted the ALC's 2003 order found that OCRM modified the approved corridor for the Dock during the permitting process and this foreclosed litigation of the original longer length of the Dock during the 2003 contested case.

On November 30, 2017, DHEC filed a SCALC Rule 19A motion requesting its Rule 60(b)(5) motion be heard at the December 6 hearing for the purposes of judicial economy as that hearing concerned only Hook's motion because the final hearing had been continued and Hook had responded to DHEC's Rule 60(b)(5) motion.

On December 6, 2017, the ALC conducted a hearing on Hook's motion to enforce the Consent Order. No testimony was given during the hearing. At the beginning of the hearing, the ALC stated, "I think this is just a motions hearing today, we've decided." The ALC also stated:

> We're just here on the motion?
>
> It was your motion for -- to enforce the consent agreement and then later in November we had a motion filed by [DHEC], a 60([b])(5) motion; is that correct? And there's been some discussion about that, whether to include that today because it wasn't filed within the 30-day time frame and I know [Hook] has objected to

> considering that due to the fact that it was filed outside of the 30-day requirement.

The court ruled it would hear arguments on the Rule 60(b)(5) motion at the hearing but would also allow further submissions on it if the parties wished.

During arguments, Hook, when providing the background to the ALC, stated that when Hook learned of the Dock, he initiated with the court a contested case challenging Patterson's permit although he did not actually have an issue with the permit allowing the roof and four-pile boat lift but instead his issue was with the placement of the Dock. Hook argued an evidentiary hearing on the roof and boat lift was not needed because he was not challenging that but instead challenging DHEC's violation of the Consent Order. Hook also argued res judicata did not apply because the ALC did not rule in 2003 that the Dock could not be 595 feet long.

During DHEC's argument at the hearing, the ALC stated:

> The problem here is, sadly and unfortunately, when . . . Patterson was seeking to build his dock, he got the wrong schemata, the wrong plan. He got the old plan. The [sic] was this short corridor that cut across Lot 10, and it was a mistake. . . . [DHEC] made an error by providing the wrong information to . . . Patterson, who then acted on that. And then all information that went subsequent to that was wrong because it didn't -- it wasn't in accordance with the [C]onsent [O]rder, which was -- which created this 500-foot-long dock. So everything's wrong. It's all -- it starts off on the whole wrong foot and that's because an error, sadly and unfortunately, not -- nobody necessarily intended to do. But just a mistake made at [DHEC], and everything that went forward from there was based on this error. . . . [S]o then the notice goes out. But the notice is wrong because the notice doesn't give notice of what's really going on, which is that a totally different dock than the one that was -- everybody agreed upon is gonna be constructed. And . . . Hook has no reason to know that because the original mistake is so

> significant. But it's a mistake. Nobody knows that it's been made. It just -- starts everything off down the wrong path. I mean, literally you're going -- not just literally -- not just figuratively in the wrong direction but literally in the wrong direction. The dock's going the wrong way, and nobody knows that.

DHEC noted because Hook had stated in his pleadings DHEC was negligent, the controversy was actually a tort and thus, under the SCTCA, Hook had to instead bring an action in the circuit court.

Patterson presented the argument he had previously submitted to the ALC in writing but also noted:

> I don't know that you have to go to such economic waste and destruction if what [Hook's] really saying is I don't have the value of my investment. Then what he's really looking for is money damages. He wants the difference between what he paid for his property versus what it's worth now. And the way -- I assume -- I've done this before in other cases where you try and prove damages by something DHEC's doing. You get an appraiser. Here['s] the property as it is; here's the property if they do this. Give me some comparables. What's it worth now as it is? What's it like if these people next door do that? And that's your measures of damages.
>
> Going out and tearing up docks that have been there, I mean, I understand she says, well, 500-foot-long docks are common in this area. Sure, they are. But there's a difference between having a dock corridor that shows that you can build a 500-foot-long dock and actually already having at that dock there and having to tear it down. So what Hook is entitled to, again, if he's entitled to anything, would be some way where [he] can demonstrate the diminution -- in fact, I don't know if this property has even gone back up to where it was worth when he bought it, based on just the market situation.

> Although clearly everybody's aware that the market generally, and in Charleston County in particular[], it is back on the rise.
>
> . . . .
>
> . . . But that, to me, if I would advise him would be the direction he would go, and I just think the draconian response of having DHEC come in and rip out an existing usable dock because, despite what he says, it's clearly aesthetic value.

In reply, Hook argued:

> You enforce [the Consent Order] by requiring OCRM to adhere to its agreed-to term in the order that it would amend its permit with the [C]onsent [O]rder. It needs to amend the general permit in accordance with the [C]onsent [O]rder. Had it done that properly, you know, in its records, we wouldn't be here today. And once that is accomplished via through your order, then the dock as it exists, is inconsistent with this [C]onsent [O]rder, and administrative action has to be taken to have the dock made consistent with the [C]onsent [O]rder. So the relief that we're asking for can be accomplished.

At the conclusion of the hearing, the ALC asked the parties if they needed to present anything else and stated they would have ten more days if they wished to submit anything additional to the court regarding DHEC's Rule 60(b)(5) motion.

On August 22, 2018, the ALC initiated a conference call to the parties.[11] Following the call, the parties filed briefs in response.

DHEC's brief argued the ALC did not have the authority to order DHEC to reimburse Patterson for the cost of materials and construction of the Dock. DHEC

[11] The record does not contain a transcript of the call because no court reporter was present.

argued because Hook had asserted in his motion to enforce the Consent Order that DHEC was negligent in exercising its duty to Patterson, any responsibility for those costs would have to be recovered under the SCTCA, which allows for adjudication of those claims in only the circuit court. Additionally, DHEC argued any award of attorney's fees would be erroneous because section 15-77-300 of the South Carolina Code (2005 & Supp. 2022) applies to only civil actions, which a contested case before the ALC is not.

Patterson's brief stated that at the ALC's request, he was providing the costs for building the Dock, which totaled $46,936, and also for an estimate of the cost to demolish and remove the Dock, which was $67,970. He provided the total costs to install the Dock and the costs to remove the Dock. He stated he was responding to the ALC's request for guidance on if it could award him attorney's fees because he had not requested them in his return to the motion to enforce. Patterson asserted that because he had only filed a return thus far, he had not yet filed a pleading that allowed him to assert a request for attorney's fees, such as a prehearing statement for a contested case. Patterson indicated his legal fees at that point amounted to $9,363.90.

Hook filed a response brief indicating he believed the ALC had concluded in the telephone conference that an award of attorney's fees from DHEC to Hook was appropriate. Hook asserted an award was appropriate under section 15-77-300 and SCALC Rule 72. Hook stated "the DHEC staff overlooked or misplaced the Consent Order and acted in complete disregard of the Consent Order." Hook asserted he had incurred fees of $29,226.19.

On May 3, 2019, the ALC issued an order granting Hook's motion to enforce the Consent Order and denying DHEC's Rule 60(b)(5) motion. The ALC noted Hook had asserted DHEC was in contempt of the Consent Order. The ALC determined that because DHEC entered into the Consent Order, it was aware of the Consent Order. The ALC found the record contained "no evidence of any legitimate effort by [DHEC] to comply," as well as "no justifiable explanation for its failure to comply" since the Consent Order had been issued. The ALC stated, "While [DHEC] appears to place blame squarely on its Project Manager, it was [DHEC's] failure to act for nearly ten years that culminated in the Project Manager's purported negligent or inadvertent actions." The ALC noted that "even after this failure was specifically brought to [DHEC's] attention by way of [Hook's] [m]otion, [DHEC] failed to take any steps to remedy the noncompliance." The

ALC determined "[DHEC's] failure to comply, despite having the power to do so, rises to the level of contempt." The ALC ordered DHEC to comply with the Consent Order and take any remedial action necessary, such as removing the noncompliant dock, at DHEC's expense. It also ordered DHEC to pay Hook's attorney fees of $29,226.19 and Patterson's attorney's fees of $9,363.90. It further ordered DHEC to pay Patterson $46,936 for the construction costs of the noncompliant dock.

Patterson filed a motion to alter or amend,[12] arguing the property owners involved in the 2003 case that contested the dock permits at that time did not receive any notice of the 2005 contested case that led to the Consent Order that changed the alignment of the Dock. He asserted those property owners "were excluded from any chance to plead [r]es [j]udicata and [c]ollateral [e]stoppel[,] which should have been their right" and therefore, it should be allowed to be pled here.

DHEC filed a motion to reconsider, arguing its actions did not rise to the level of willful disobedience of a court order and it was deprived of due process. Further, it asserted even if its actions amounted to willful disobedience, a compensatory contempt award to Patterson was improper because he was not the complainant. Additionally, it asserted the SCTCA was the exclusive remedy.

DHEC later filed a return to Patterson's motion to reconsider and a supplement to its motion to reconsider. DHEC agreed with Patterson "that the convoluted history of this case from 2004 to present, raise[d]the potential of a 'miscarriage of justice' unless the parties to the 2003 litigation . . . [we]re given an opportunity to be heard." It asserted the property owners that were parties in the 2003 case "were parties to a fully-litigated, contested case that resulted in an order in which they, or their successors in interest, have rights that are potentially harmed by the [Consent] Order and" the current order. DHEC indicated that whether those parties had notice of the 2005 proceedings and resulting Consent Order was unclear. DHEC also asserted "the parties with interests that may [have been] impacted by the 2019 [o]rder ha[d] not been notified of the current proceedings." It stated that those "parties' interests [could not] be adequately represented by the existing parties to this litigation." It asserted that those parties should be joined under Rule 19(a), SCRCP.

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[12] Patterson filed the motion pro se because he was no longer represented by counsel.

Hook filed a return to DHEC's motion to reconsider. He argued the evidence established the situation here arose due to clear failures of DHEC to "append the Consent Order to the permit in []DHEC's own permitting file, whether in paper or electronic form, and have procedures "to ensure that its own permitting staff was . . . aware of an agreement that [DHEC] had negotiated, signed[,] and filed with the [ALC] and [that] directly affected a permit issued by" DHEC. He noted DHEC provided that procedures had been put into place but that was after this case arose. He asserted DHEC "offered no evidence of any effort undertaken to comply with [the] Consent Order," as DHEC "could not confirm that the Consent Order was ever placed in the permitting file for the subject permit, either at the time it was entered or at any point during the thirteen-year period that transpired before this case." Hook argued DHEC "gave no explanation as to why the Consent Order was not available when . . . Patterson applied for his amendment and built his dock in 2014." Further, Hook asserted that by DHEC's account, the permitting file lacked any documentation of Ford's "request to amend the subject permit and of the 2005 contested case filing [that] led to the negotiation of the Consent Order." He contended "[t]hese documents should have been accessible to the Project Manager assigned to . . . Patterson's amendment request."

The ALC issued an amended order granting Hook's motion to enforce the Consent Order and denying DHEC's Rule 60(b)(b) motion. The amended order largely reiterated the May 3, 2019 order, which it vacated and replaced. The ALC found DHEC's and Patterson's arguments about giving the parties to the 2003 litigation an opportunity to be heard and be joined were being raised for the first time in motions to reconsider and therefore would not be considered.

As "to the remedy that can be granted when enforcing the Consent Order," the ALC noted "[Hook] asserts that [DHEC] is in contempt of the Consent Order."

> In this case, [DHEC] does not dispute that it entered into the Consent Order in February 2005, or that it was aware of its specific obligations thereunder. [DHEC] also does not dispute that it, as the [s]tate agency charged with administering dock permits, had the duty and the power to comply with the Consent Order. However, there is no evidence of any legitimate effort by [DHEC] to comply with the Consent Order, and no justifiable explanation for

> its inability to comply after its issuance in 2005. In fact, [DHEC] failed to even allege a good-faith effort to comply with the Consent Order from which it now seeks relief. While [DHEC] appears to place blame solely on its Project Manager, it was [DHEC]'s failure to amend the Permit in accordance with the Consent Order in the nearly ten years after its issuance that culminated in the Project Manager's purported inadvertent actions. Moreover, even after this failure was specifically brought to [DHEC]'s attention by way of [Hook's] [m]otion, [DHEC] failed to take any steps to remedy its noncompliance.
>
> In light of the foregoing, the court finds that [DHEC's] failure to comply with the Consent Order, despite having the power and ample ability to do so, rises to the level of contempt. . . . While the court does not take this position lightly, there is simply no evidence of any effort by [DHEC] to comply with or remedy its noncompliance. It would be unjust to allow [DHEC] to ignore its obligations under the Consent Order to the detriment of others without repercussion, while reaping the benefits conferred by it for well over a decade. The court further finds that such a conclusion best serves the interests of equity and judicial economy as well.

The ALC ordered DHEC to

> comply with the Consent Order and, at its own expense, take such remedial measures as are necessary to effectuate the Consent Order. Such compliance may be accomplished by retroactively amending the Permit, reflecting the Amended Alignment with a postdated expiration date, and bringing an enforcement action against Patterson for the removal of the existing noncompliant dock. Additionally, the court finds that [Hook] has suffered actual losses due to the legal fees he

> incurred enforcing the Consent Order, and that Patterson has suffered actual losses by building a noncompliant dock in reliance on the version of the Permit issued to him by [DHEC], as well as by incurring legal fees defending this action. Thus, [DHEC] must pay legal fees to [Hook] in the amount of $29,226.19. Likewise, upon removal of the noncompliant dock at its expense, [DHEC] must pay a fine in the amount of $56,299.90, to Patterson for the original cost of his noncompliant dock and his legal fees.

(footnote omitted).

This appeal by DHEC followed.

STANDARD OF REVIEW

"The Administrative Procedures Act (APA) establishes the standard of review for appeals from the ALC." *Abel v. S.C. Dep't of Health & Env't Control*, 419 S.C. 434, 437, 798 S.E.2d 445, 446-47 (Ct. App. 2017) (quoting *Greeneagle, Inc. v. S.C. Dep't of Health & Env't Control*, 399 S.C. 91, 95, 730 S.E.2d 869, 871 (Ct. App. 2012)). "Under the APA, this court may 'reverse or modify the decision [of the ALC] if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . (d) affected by other error of law.'" *Id.* at 437, 798 S.E.2d at 447 (alterations by court) (quoting S.C. Code Ann. § 1-23-610(B) (2005)).

"A determination of contempt ordinarily resides in the sound discretion of the trial judge." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994)). "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." *Stone v. Reddix-Smalls*, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988).

LAW/ANALYSIS

DHEC contends the ALC erred in finding DHEC's actions amounted to willful disobedience of a court order. It asserts the record does not contain any "clear and specific" acts or conduct by it that supports the ALC's finding of willful failure to comply with the Consent Order. It furthers maintains the ALC failed to provide sufficiently-detailed factual findings of DHEC's willful disobedience of the Consent Order "to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been applied to those findings." Additionally, it argues section 1-23-600(H)(2) of the South Carolina Code (Supp. 2022), the automatic stay provision, prevented DHEC from complying with the Consent Order before the ALC issued a decision in this matter. Further, it contends in light of the competing interests under the 2003 and the 2005 orders, DHEC acted lawfully and without willful disobedience until the competing rights are resolved. We agree.[13]

"The APA provisions permit parties to resolve disputes through informal stipulations." *Leventis v. S.C. Dep't of Health & Env't Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) (citing S.C. Code Ann. § 1-23-320(f) (1986) ("Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.")).

"[A] consent order is an agreement of the parties, *under the sanction of the court*, and is to be interpreted as an agreement." *Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (emphasis added). "In South Carolina jurisprudence, settlement agreements are viewed as contracts." *Abel v. S.C. Dep't of Health & Env't Control*, 419 S.C. 434, 438, 798 S.E.2d 445, 447 (Ct. App. 2017) (quoting *Nichols Holding, LLC v. Divine Cap. Grp.*, 416 S.C. 327, 335, 785 S.E.2d 613, 615 (Ct. App. 2016)); *see also City of North Myrtle Beach v. E. Cherry Grove*

[13] Patterson did not file a notice of appeal. He filed a Respondent's brief, in which he argues the ALC's order should be reversed for several reasons. Because Patterson did not file a notice of appeal, his arguments in his brief supporting reversal are not properly before this court. *See Com. Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999) (finding the court did not need to address an issue raised by respondent as a ground for error in its respondent's brief when the respondent did not file an appeal).

Realty Co., 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012) ("As a general rule, judgments are to be construed like other written instruments." (quoting *Weil v. Weil*, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989))). "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Abel*, 419 S.C. at 438, 798 S.E.2d at 447 (quoting *Nichols Holding, LLC*, 416 S.C. at 335, 785 S.E.2d at 615).

"Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed. The appellate courts of this state have zealously defended the right of trial courts to vindicate their authority by way of contempt." *State v. Bevilacqua*, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct. App. 1994). "Absent the issuance of an order staying its effect, any violation of the terms and provisions of a final order and decision of an administrative law judge may subject the violator to sanctions for contempt and/or a fine." Marvin F. "Buddy" Kittrell, *How to Obtain a Stay of an ALJ'S Final Decision*, S.C. Envtl. Compliance Update, Aug. 1998, at 1.

"All courts have the inherent power to punish for contempt, which 'is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.'" *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 824 (Ct. App. 2009) (quoting *Miller v. Miller*, 375 S.C. 443, 453, 652 S.E.2d 754, 759 (Ct. App. 2007)). "Nevertheless, contempt is an extreme measure and the power to adjudge a person in contempt is not to be lightly asserted." *Bevilacqua*, 316 S.C. at 128, 447 S.E.2d at 216. "Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion." *Hawkins v. Mullins*, 359 S.C. 497, 503, 597 S.E.2d 897, 900 (Ct. App. 2004).

"Generally, [section] 1-23-630 [of the South Carolina Code (Supp. 2005)] grants Administrative Law Judges the same power in chambers or in an open hearing as circuit court judges, along with the power to issue those remedial writs as are necessary to give effect to its jurisdiction." *S.C. Dep't of Revenue v. Club Rio, Inc.*, No. 06-ALJ-17-0647-IJ, 2006 WL 2617194, at *2 (S.C. Admin. Law Ct. Aug. 22, 2006). "The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to

the due administration of justice." *Id.* (quoting *Ex Parte Robinson*, 86 U.S. 505, 510 (1873)); *see also* 73A C.J.S. *Public Administrative Law and Procedure* § 595 (2014) ("Disobedience of a decree or order enforcing an administrative decision or order is punishable by contempt proceedings, and whether a party has failed to comply with the provisions of an enforcement decree or order is to be determined by the court in contempt proceedings." (footnote omitted)); 17 C.J.S. *Contempt* § 50 (2020) ("Governmental entities and their agents are subject to civil contempt for failure to comply with court orders and judicial decrees.").

"In an action for contempt, the burden of proof is on the moving party." *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986). "A party seeking a contempt finding for violation of a court order must show the order's existence and facts establishing the other party did not comply with the order." *Noojin v. Noojin*, 417 S.C. 300, 306, 789 S.E.2d 769, 772 (Ct. App. 2016) (quoting *Abate v. Abate*, 377 S.C. 548, 553, 660 S.E.2d 515, 518 (Ct. App. 2008)). "In a proceeding for contempt for violation of a court order, the moving party must show the existence of a court order and the facts establishing the respondent's noncompliance with the order." *Hawkins*, 359 S.C. at 501, 597 S.E.2d at 899. "Once the movant makes a prima facie showing by pleading an order and demonstrating noncompliance, 'the burden shifts to the respondent to establish his defense and inability to comply.'" *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001) (quoting *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)).

"[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." *Widman v. Widman,* 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001). "A finding of contempt . . . must be reflected in a record that is 'clear and specific as to the acts or conduct upon which such finding is based.'" *Tirado v. Tirado*, 339 S.C. 649, 654, 530 S.E.2d 128, 131 (Ct. App. 2000) (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982)). "[C]ontempt results from willful disobedience of a court order; . . . before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217). "A willful act is . . . one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *Id.* at

607-08, 567 S.E.2d at 520 (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217).

In the case of *Ex parte Kent*, 379 S.C. 633, 666 S.E.2d 921 (Ct. App. 2008), this court reversed a decision by the trial court to hold an expert witness in contempt. The trial court held the witness in contempt "on the basis that [the witness] deliberately gave inadmissible testimony . . . . In issuing contempt sanctions, the trial court reasoned that [the witness] had substantial and continuous involvement in court proceedings as an expert witness over a number of years and should have known that evidence regarding a citation was inadmissible." *Id.* at 637, 666 S.E.2d at 923. However, this court noted "the colloquy during the trial indicates the trial court made no inquiry to determine [the witness's] knowledge regarding the admissibility or inadmissibility of a citation." *Id.*

This court although "mindful of the trial court's concern and recogniz[ing] the possibility of such knowledge of inadmissible evidence by an individual who regularly appears in court," found "the extent of such knowledge for the purposes of determining willfulness must be sufficiently established by the record prior to an imposition of a contempt sanction." *Id.* at 639, 666 S.E.2d at 924. This court determined, "The extent of [the witness's] knowledge was not established in the record and may not be established by speculation." *Id.* This court found it was required to "confine [its] review to the record presented" and held "the trial court's decision to impose contempt sanctions upon [the witness] lack[ed] evidentiary support." *Id.* Accordingly, this court "reverse[d] the sanction."[14] *Id.*

"[C]ivil contempt must be proven by clear and convincing evidence . . . ." *Ex parte Cannon*, 385 S.C. at 661, 685 S.E.2d at 824. "'The purpose of civil contempt is to coerce the defendant to do the thing required by the order for the benefit of the complainant[,]' while '[t]he primary purposes of criminal contempt are to preserve the court's authority and to punish for disobedience of its orders.'" *Id.* at 662, 685 S.E.2d at 824 (alterations by court) (quoting *Poston v. Poston*, 331 S.C. 106, 111,

[14] However, Judge Thomas concurred in part and dissented in part; she believed the record supported a finding of willfulness and the contempt should be affirmed because "the courtroom experience [the witness] presented while being qualified as an expert witness" demonstrated the witness "knew a traffic citation is inadmissible in a court of law." *Ex parte Kent*, 379 S.C. at 641-44, 666 S.E.2d at 925-27 (Thomas, J., concurring in part and dissenting in part).

502 S.E.2d 86, 88 (1998)). "If it is for civil contempt, the punishment is remedial and for the benefit of the complainant." *Id.*

Although DHEC violated the Consent Order by issuing the permit showing the Dock in the wrong position, the record contains no evidence that the permit was issued with any intent to violate the law. Hook speculates that a DHEC employee failed to follow practices by not entering the Consent Order into its records as a modification of the original permit. However, no evidence demonstrates what actually happened. To uphold a finding of contempt, the record must contain evidence that some DHEC employee acted purposefully in disregarding the Consent Order. *See Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) ("A willful act is . . . one 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'" (quoting *Black's Law Dictionary* 1434 (5th ed. 1979))). Here, the record contains no actual acts of willfulness.[15] Hook stated "the DHEC staff overlooked or misplaced the Consent Order."

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[15] Hook points to, as did the ALC, DHEC's failure take any action once the issue was brought to DHEC's attention by Hook. Hook notes DHEC provided it had put in place procedures to ensure this does not happen in the future, but he asserts DHEC needed to also take affirmative action for the current situation. The automatic stay provision, which DHEC asserts prevented it from taking any action to comply with the Consent Order once the order was brought to its attention by Hook until the ALC decided the matter, provides: "A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension." S.C. Code Ann. § 1-23-600(H)(2). Under subsection (H)(4)(a) "a party may move before the presiding [ALC] to lift the stay imposed pursuant to this subsection or for a determination of the applicability of the automatic stay." § 1-23-600(H)(4)(a) (Supp. 2022) (amended by Act No. 134, 2018 S.C. Acts 1313, § 1, effective Mar. 12, 2018 (limiting the amount of time an automatic stay could last)); *see also* Michael Traynham, *Opening the Flood Gates? Preservation Society and "Affected Person" Standing*, S.C. Law., Nov. 2020, at 40, 44 ("Act 134 was passed, amending the prior law governing automatic stays of DHEC permitting decisions during the pendency of a contested case hearing. The new law shifted the burden of maintaining the status quo to the party challenging the decision."). "The

Hook asserts because DHEC should be charged with knowing it agreed to the Consent Order, any violation of that order should be found to be willful. We cannot agree with this position in a contempt matter because willfulness is a crucial element. Hook does not provide us, nor could we find, any South Carolina case providing that an entire agency is charged with knowledge of an employee's actions for purposes of willfulness in a contempt finding as he asserts. Therefore, the ALC erred in finding DHEC's behavior was willful and thus holding it in contempt. Because the attorney's fees and costs awarded to Hook and Patterson are predicated on the finding of contempt, the attorney's fees and costs are also reversed.[16] *See Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 610, 790 S.E.2d 430, 435 (Ct. App. 2016) (determining because it decided "to reverse the circuit court's findings on contempt, [it] also reverse[d] the award of attorney's

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purpose of the automatic stay is to preserve the status quo until a decision is rendered in a contested case . . . ." *Tract 7, LLC v. S.C. Dep't of Health & Env't Control*, No. 15-ALJ-07-0258-CC (S.C. Admin. Law Ct. July 13, 2015) (citing *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990)); *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) ("[A] 'stay' is a 'stopping.'" (quoting *Black's Law Dictionary* 1267 (5th ed. 1979))). Once DHEC was made aware by Hook's letter the permit showed the Dock in the incorrect position, the damage was already done. DHEC correctly waited to take any action such as revoking Patterson's permit until the ALC reached a decision on the matter. Further, because Hook started this case by filing a contested case hearing, DHEC was not wrong to rely on the automatic stay provision.

[16] Based on this determination, we need not consider DHEC's remaining arguments that ALC erred in (1) ignoring the competing interests of parties to the 2003 and the 2005 orders; (2) depriving it of due process as to the compensatory contempt award; (3) awarding compensatory contempt damages to Patterson because a compensatory contempt award is limited to the complainant's expenses only and Patterson was not a complainant; and (4) ignoring the SCTCA's "exclusive remedy" provision under section 15-78-200 of the South Carolina Code (2005). *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not review the remaining issues when its determination of a prior issue is dispositive of the appeal).

fees"); *Eaddy*, 345 S.C. at 44, 545 S.E.2d at 833 (reversing the issue of attorney's fees when the appellate court reversed the lower court's finding on contempt).

REVERSED.

WILLIAMS, C.J., and VINSON, J., concur.