

**RECEIVED**  
**Feb 26 2026**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

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Case No. 2021-CP-39-00329  
Court of Appeals Case No. 2025-001327

Michael and Mary Smith,

Appellants,

v.

King Asphalt, Inc.

Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN TO MOTION FOR  
APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE  
RECORD**

Michael and Mary Smith  
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## **APPELLANTS' REPLY TO RESPONDENT'S RETURN TO MOTION FOR APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE RECORD**

Appellants Michael and Mary Smith, pro se, respectfully submit this Reply to Respondent's Return filed February 26, 2026.

### **I. RESPONDENT'S RETURN IS UNTIMELY**

Appellants served their Motion on February 9, 2026, by email, the agreed method of service between the parties. Respondent's Proof of Service admits that its Return was not served until February 26, 2026. Counting from the date of email service, Day 15 fell on February 24, 2026. Respondent's Return was served two days late. Appellants do not move to strike the Return but do not concede its timeliness and preserve this objection.

### **II. RESPONDENT IGNORES THE GOVERNING LEGAL AUTHORITY**

Respondent's entire argument rests on S.C. Code § 14-1-235, which limits when "a judge, court, or court official shall appoint an attorney to represent a party in a civil action." That argument misses the mark entirely because Appellants do not seek appointment under a civil-appointment statute.

Appellants invoke:

- **Rule 608(b), SCACR**, which expressly authorizes this Court to appoint counsel in "those few cases in which it is reasonably necessary to do justice"; and
- **This Court's inherent equitable authority**, recognized in *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983), and *Ex parte Martin*, 321 S.C. 533, 471 S.E.2d 134 (1995).

Respondent's Return does not cite Rule 608(b). It does not cite *Dibble*. It does not cite *Martin*. It offers no argument whatsoever for why the Supreme Court's own appellate rule, expressly

authorizing appointment when "reasonably necessary to do justice", is displaced by a general statutory limitation on trial court appointments.

A general statute addressing routine civil appointments in the trial courts does not silently repeal or restrict this Court's express appellate rule-making authority or its inherent equitable power. Respondent has joined no issue on the authority Appellants actually invoked.

### **III. THE TRIAL COURT ALREADY FOUND THAT COUNSEL IS WARRANTED**

Respondent's opposition cannot be reconciled with the trial court's own findings, which Respondent ignores entirely in its Return.

Judge Gravely found in his March 19, 2024 Order:

"As in most complicated legal matters, the Plaintiffs need representation by an attorney licensed to practice law in South Carolina. Due to the Plaintiffs' health condition and other limitations, it is even more important that they not proceed as unrepresented litigants... All of this clearly warrants that Plaintiffs have counsel." (Order Mar. 19, 2024, p. 4.)

At the March 7, 2024 hearing, Mr. Pressly stated on the record: "The Smiths need help getting a lawyer." The Court responded without hesitation: "Well, there's no question about that." (Tr. Mar. 7, 2024, p. 44.)

Respondent offers no basis to disregard these findings. That the trial court has already determined counsel is warranted, while Respondent continues to oppose every mechanism that would provide it, is itself compelling grounds for this Court to act under Rule 608(b).

### **IV. RESPONDENT DOES NOT DISPUTE THE FUNCTIONAL ILLITERACY OR THE DEFECTIVE RECORD**

Appellants' Motion documented in detail:

- Michael Smith's functional illiteracy and both Appellants' health and cognitive limitations, evidenced by the handwritten petition stating "We cant read and write we need help we are both very sick." (Exhibit I.)
- A corrupted 830-page exhibit volume with approximately 300 illegible pages, confirmed by the Deputy Clerk's own email that court scanners "flip pages" and produce blacked-out and misaligned images. (Exhibit E.)
- A curated 52-page sample illustrating solid black blocks, upside-down and sideways pages, and sheared text. (Exhibit L.)
- Critical digital evidence, SCHK dashcam video, 911 calls, insurance interview, and Trooper audio, submitted on USB but omitted from the certified record. (Exhibit J.)

Respondent's Return does not contest any of these facts. It does not assert the record is legible. It does not assert the USB evidence is properly included. It does not deny the functional illiteracy or impairment evidence. On this unrebutted showing, requiring functionally illiterate appellants to brief complex preserved issues from a structurally defective record without counsel is precisely the scenario in which appointment is "reasonably necessary to do justice" under Rule 608(b).

## **V. RESPONDENT'S OWN LITIGATION CONDUCT CONFIRMS THIS IS AN EXTRAORDINARY CASE**

### **A. Respondent Opposed IFP Relief on False Grounds**

On July 24, 2025, Respondent filed a Return opposing Appellants' Motion to Proceed In Forma Pauperis, arguing that IFP relief was unavailable at the appellate stage and attempting to undermine Appellants' indigency by referencing prior settlement proceeds. That tactic was a deliberate misapplication of the IFP standard, which focuses on **present** financial capacity, not past compensatory recoveries.

As Appellants documented under oath, those settlement proceeds went primarily to their then debt, cost of living and compensatory payments. Moreover, after six years of litigation, Appellants had fallen substantially behind on ordinary living expenses, accumulated exorbitant costs of daily living during the period of disability caused by the accident for which Respondent bears responsibility, and exhausted those funds on the basic necessities of life. Respondent did not contest the truthfulness of Appellants' sworn indigency affidavit, did not allege fraud, and offered no evidence that Appellants currently possess the financial capacity to retain appellate counsel. Its reference to a past settlement was irrelevant, improper, and intended solely to obstruct Appellants' access to this Court.

#### **B. Respondent Filed a False Certificate of Email Service, Never Corrected**

Respondent's July 24, 2025 Proof of Service certified under penalty of perjury that the IFP Return had been served on Appellants by email on that date. Appellants never received any such email. As Appellants documented in their August 4, 2025 Reply, they did not receive Respondent's Return by email at all, they received it only when a hard-copy arrived by U.S. Mail on July 30, 2025, and they were barely able to respond in time.

Respondent has never corrected or withdrawn that false certificate of email service. No explanation has been offered. A sworn certificate of service is not a formality; it is a representation to this Court. Its falsity, left uncorrected on the docket, goes directly to Respondent's credibility and its good faith in this litigation.

#### **C. Respondent Has Serially Opposed Every Mechanism That Would Allow Appellants to Obtain Help**

The full pattern is as follows:

- Respondent opposed Rule 40(j) relief in the circuit court on four separate occasions, even after multiple independent attorneys advised that Rule 40(j) was the only realistic path to substitute counsel. (Exhibits G, H, M, N.)
- Respondent opposed IFP in the circuit court, opposed appointment of “next friend” or guardian to assist Appellants with disabilities.
- Respondent opposed In Forma Pauperis status on July 24, 2025 in the Court of Appeals.
- Respondent now opposes appointment of appellate counsel, despite the trial court's express findings and the Court's on-the-record acknowledgment that counsel is unquestionably warranted.

Taken together, this is not a series of isolated procedural positions. It is a sustained strategy to win not on the merits but by ensuring that functionally illiterate, indigent appellants remain unrepresented and unable to navigate a corrupted record. Rule 608(b) exists precisely to prevent that outcome.

## **VI. THE PRESERVED LEGAL ISSUES WARRANT PROFESSIONAL ADVOCACY**

Respondent's Return is also silent on the substance of the appeal itself. It offers no argument that the three preserved legal issues, the 1-inch versus 2-inch height differential standard, the unannounced expert requirement imposed at summary judgment in a negligence per se case, and the statutory definition of a work zone under S.C. Code § 56-5-1535(F)(1), are insubstantial, waived, or inappropriate for appellate review. These are questions of statewide importance that deserve to be briefed by competent counsel from a complete and legible record.

## **VII. RELIEF REQUESTED**

For all the foregoing reasons, Appellants respectfully request that this Court:

1. **GRANT** appointment of qualified appellate counsel pursuant to Rule 608(b), SCACR, and this Court's inherent equitable authority recognized in *Ex parte Dibble* and *Ex parte Martin*;
2. **REMAND** to the circuit court with instructions to:

- a. Re-scan the approximately 300 illegible exhibit pages so that all images and text are legible and correctly oriented; and
  - b. Ensure the digital evidence submitted on USB (SCHP dashcam, 911 calls, insurance interview, Trooper audio) is preserved, incorporated, and transmitted in usable form;
3. **STAY** all appellate briefing deadlines, including the 30-day deadline triggered by the Court's January 14, 2026 letter, until the corrected record is certified and appointed counsel has had a reasonable opportunity to review it with Appellants; and
  4. **GRANT** such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Michael Smith  
Michael Smith, Appellant pro se  
/s/ Mary Smith  
Mary Smith, Appellant pro se  
220 Stancil Street  
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MichaelDSmith@housemail.com

Dated: February 26, 2026

## CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2026, I served a true and correct copy of the foregoing APPELLANTS' REPLY TO RESPONDENT'S RETURN TO MOTION FOR APPOINTMENT OF COUNSEL AND REMAND TO REPAIR THE RECORD upon Respondent's counsel of record by electronic mail:

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/s/ Michael Smith  
Michael Smith  
Pro Se Appellant

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