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Mar 24 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case Number: 2024-000140

BAYAN ALEKSEY, #5059,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**MEMORANDUM IN SUPPORT OF PETITIONER'S
REPRESENTATION BY ATTORNEY FRANZ**

ALLISON FRANZ
Justice 360
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Counsel for Petitioner

In response to the Court’s letter dated March 23, 2026, counsel for Petitioner, Bayan Aleksey, submits that Attorney Franz’s representation of Mr. Aleksey in this Court is permitted under the Rules of Professional Conduct, Rule 407, SCACR, for the following reasons.

Rule 3.7 of the Rules of Professional Conduct does not apply in this matter because the plain language of the rule limits its application to trials, not appeals. Rule 3.7 provides:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 - (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

The rule is not a conflict of interest rule *per se*; rather, it is designed to prevent confusing the trier of fact, particularly jurors, from being “confused or misled by a lawyer serving as both advocate and witness.” Rule 3.7, cmt. 2. The rule says nothing with respect to whether an attorney who served as a witness at trial may subsequently represent the client on appeal, and this is because the issue the rule is designed to prevent—confusion of the trier of fact—is not relevant on appeal.

Rule 3.7 did apply at Mr. Aleksey’s evidentiary hearing in circuit court, and counsel in circuit court fully complied with the Rule: Attorney Franz did not represent Mr. Aleksey at the time she was called to testify and indeed never represented Mr. Aleksey in circuit court. At the time that Attorney Franz was called as a witness in this case, she was employed as a fellowship attorney at Justice 360 and was called to testify by Mr. Aleksey’s prior counsel, Lindsey Vann and Elizabeth Franklin-Best, about work that Attorney Franz had performed as a law student several years earlier, the results of which (that a piece of Mr. Aleksey’s writing was determined by computer analysis to be written at a 5th-grade level) were not disputed.

Finally, prior to her appointment in Mr. Aleksey's case, Attorney Franz consulted with a law professor who teaches and publishes in the field of legal ethics, who advised her that no conflict of interest or other ethical issues would arise from Attorney Franz's representation of Mr. Aleksey in this Court. Attorney Franz also consulted with Mr. Aleksey prior to her appointment. Mr. Aleksey, who was aware that Attorney Franz had testified at his PCR hearing, consented to the representation and Attorney Franz has spent significant time since her appointment forming an attorney-client relationship with Mr. Aleksey, including visiting him multiple times to discuss the progress and issues of his case.

For the foregoing reasons, counsel for Petitioner submits that Attorney Franz's representation is permitted under the South Carolina Rules of Professional Conduct.

Respectfully submitted,

/s/Allison Franz

Allison Franz

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March 24, 2026.