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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

March 25, 2026
(via electronic submission only)

The Honorable Patricia A. Howard
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Bayan Aleksey v. State, Appellate Case No. 2024-000140

Dear Ms. Howard:

By letter dated March 23, 2026, the Court called for the parties' positions on whether (1) Aleksey and the State consent to Franz's representation on appeal; (2) whether Franz's representation is appropriate; and, in so responding, address whether Rule 3.7 is implicated, and if implicated, have applicable provisions of the rule been complied with. The State submits this response which begins with Rule 3.7 as that is the focus of the Court's questions.

By the State's reading, Rule 3.7 does not apply based on the text of the rule which limits its application to trial. This is the reading shared by our Court of Appeals in *Fine Hous., Inc. v. Sloan*, 431 S.C. 499, 848 S.E.2d 581 (Ct. App. 2020). In that case, the Court of Appeals considered an order under Rule 3.7 that was interpreted as a "complete" disqualification from representation, and resolved Rule 3.7 does not have that reach: "we hold that Rule 3.7 does not prohibit an attorney from representing the client in other roles outside of trial advocacy." *Id.*, at 511, 848 S.E.2d at 587. This is consistent with other jurisdictions that have consider the same rule. *See, e.g., Lopez v. Lopez*, 81 Cal. App. 5th 412, 423–24 (Cal.App. 2022) ("Rule 3.7 is limited on its face to trial."); *Foley v. Drexel Univ.*, No. CV 22-1777, 2023 WL 3611529, at *3 (E.D. Pa. May 23, 2023) ("Rule 3.7 does not contemplate the disqualification of an attorney as an advocate *before or after* trial")(emphasis in original)); *CasKim, LLC v. Carver Bible Coll., Inc.*, No. 1:22-CV-1864-MLB, 2023 WL 11990857, at *13 (N.D. Ga. Feb. 8, 2023) (agreeing that "Rule 3.7 applies only at trial"); *Su v. Sotheby's, Inc.*, No. 17-CV-4577 (VEC), 2021 WL 3537189, at *3 (S.D.N.Y. Aug. 11, 2021) ("because Rule 3.7(a) can disqualify only trial counsel, and Wong is not going to be trial counsel, she is not disqualified under Rule 3.7(a)"); *Papageorge v. Kryzanski*, No. FBTCV216103670S, 2021 WL 2593867, at *4 (Conn. Super. Ct. June 4, 2021) ("Rule 3.7 does not prevent an attorney from representing a client as a whole, but from representing the client at trial only"); *Thompson v.*

Commonwealth of Pa. State of Police, No. 1:13-CV-02301, 2014 WL 6982634, at *2 (M.D. Pa. Dec. 10, 2014) (“Several courts and at least one Pennsylvania Bar Association committee have observed that Rule 3.7 regulates only *trial* conduct[.]”) (emphasis in original).

If the question is whether Rule 3.7 may make representation on appeal inappropriate, the State must respond that Rule 3.7 does not make the representation inappropriate.

Lastly, to the extent there is still a question of consent, the State respectfully would take no position. As a practical matter, the State’s consent would not affect an applicant/petitioner’s complaints regarding his own counsel, if any should be asserted. The State follows the general rule that unless there is a known conflict which it should bring to the Court’s attention, it otherwise leaves matters regarding counsel to the discretion of the Court.

Sincerely,



Melody J. Brown
Senior Assistant Deputy Attorney General
S.C. Bar No. 14244

/MJB

cc: Allison Franz, Esq. (via email only)