

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM PICKENS COUNTY

Court of Common Pleas
Jessica A. Salvini, Circuit Court Judge

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

Michael and Mary Smith,
Appellants,
v.
King Asphalt, Inc.
Respondent.

**MOTION FOR RECONSIDERATION OF ORDER DENYING
APPOINTMENT OF COUNSEL, AND MOTION TO STAY BRIEFING
DEADLINE PENDING DISPOSITION**

Appellants Michael and Mary Smith respectfully move this Court to reconsider its June 8, 2026 Order denying appointment of counsel, and to stay the current July 8, 2026 briefing deadline pending disposition of this Motion. This Motion is brought under Rule 240, SCACR, and the Court's inherent authority over its interlocutory

orders. To the extent the June 8 Order has the practical effect of finally deciding whether this appeal may proceed to merits review, Appellants further preserve in the alternative the principles reflected in Rule 221(a) and Rule 221(c), SCACR.

The June 8 Order does not address the authorities and circumstances Appellants presented in support of appointment. It does not engage the inherent judicial power recognized in *Ex parte Dibble*, 279 S.C. 592, 595, 597 (Ct. App. 1983), does not address the case-specific due process analysis required by *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), and does not address the combination of circumstances that make meaningful appellate review impossible here absent counsel: Appellants' functional illiteracy and medical limitations, a defective and incomplete certified record, the trial court's un rebutted finding that counsel is warranted, and the barrier created by the trial court's on-the-record warning concerning non-lawyer assistance. Because the Order does not address those arguments or authorities, reconsideration is warranted.

I. THE PROPER VEHICLE IS RECONSIDERATION OF AN INTERLOCUTORY ORDER UNDER RULE 240 AND THE COURT'S INHERENT AUTHORITY

The June 8 Order is not a final disposition on the merits of this appeal. It is an interlocutory order entered in the course of appellate administration. Appellants

therefore seek reconsideration under Rule 240, SCACR, and under the Court's inherent authority to revise interlocutory orders entered before final disposition.

The Order's consequences are not merely administrative. It denies counsel, leaves in place a July 8, 2026 briefing deadline, and thereby places Appellants in the position of either attempting appellate briefing they are not capable of preparing or suffering dismissal for failure to comply. To the extent the Order's certain operation is dismissal or final foreclosure of merits review, Appellants preserve the alternative argument that rehearing principles remain available because the Order effectively decides whether this appeal can proceed at all.

II. THE ORDER DOES NOT ADDRESS THE COURT'S INHERENT POWER TO APPOINT COUNSEL WHERE REASONABLY NECESSARY TO DO JUSTICE

South Carolina courts possess inherent power to do what is reasonably necessary to ensure just results. In *Ex parte Dibble*, this Court held that courts have the inherent power to appoint counsel without compensation where such appointment appears reasonably necessary to do justice, describing the case before it as extraordinary because appointment was necessary to render justice and the litigant was not reasonably able to secure a lawyer on his own. The standard *Dibble* announced is

whether appointment is reasonably necessary to do justice. That standard governs here.

This record satisfies it. The trial court found in its March 19, 2024 Order that "all of this clearly warrants that Plaintiffs have counsel." That finding was presented to this Court and remains unrebutted. Appellants also presented that after years of diligent effort, contact with more than twenty-five attorneys and legal aid entities, and documented indigency, they have been unable to obtain counsel through ordinary means. The June 8 Order cites *Dibble* but does not apply the standard *Dibble* announced, does not address the trial court's unrebutted finding, and does not explain why this record falls outside *Dibble*'s scope. That omission is the threshold error requiring reconsideration.

III. THE ORDER DOES NOT ADDRESS THE CASE-SPECIFIC DUE PROCESS ANALYSIS REQUIRED BY *LASSITER* AND *MATHEWS*

Appellants did not argue that there is a categorical constitutional right to counsel in every civil appeal. Ex parte *Dibble* correctly holds there is no such categorical right, and that proposition is undisputed. Appellants' argument was narrower: where state action combines with a litigant's severe incapacity and procedural barriers so that a protected claim cannot be meaningfully presented, due process requires a case-

specific analysis under *Lassiter* and *Mathews v. Eldridge*. The June 8 Order does not address *Lassiter*, *Mathews*, or any of the three factors that analysis requires.

A. The Private Interest Is Exceptional

This appeal is Appellants' only remaining opportunity to obtain review of the dismissal of their personal injury claims arising from the March 2019 accident on Highway 8 in Easley, South Carolina. For these Appellants, denial of counsel does not merely create procedural disadvantage. It threatens permanent extinguishment of their only realistic opportunity to obtain appellate review on the merits of a personal injury claim brought by injured, indigent, functionally illiterate individuals against a corporate defendant with experienced appellate counsel and institutional resources. The asymmetry is total. The private interest at stake could not be higher for these litigants.

B. The Risk of Erroneous Deprivation Is Extreme

The risk of erroneous deprivation here is not hypothetical. It is certain. Appellants represented that Michael Smith is functionally illiterate, that both Appellants have documented health and cognitive limitations, and that the certified record is materially defective: hundreds of exhibit pages are illegible, blacked out, flipped, or sheared, a defect confirmed in writing by Deputy Clerk Michelle Broom of the Pickens County Clerk of Court, and critical digital evidence submitted below on

USB flash drive, including SChP dashcam video, 911 call audio, insurance interview audio, and trooper audio statements, is missing from the certified record entirely.

These are not abstract hardships. They bear directly and concretely on the ability to identify appellate issues, review the record, cite controlling authority, prepare a brief that conforms to Rule 208, SCACR, and respond to a represented respondent in this Court. For functionally illiterate litigants operating from a corrupted and incomplete record, the risk of erroneous deprivation through procedural default is not a possibility to be weighed. It is the inevitable result of denying appointment. The June 8 Order does not address any of these barriers.

C. The State's Interest Favors Accurate Adjudication, Not Procedural Default

The State's interest is not merely administrative efficiency. It encompasses the institutional interest in accurate adjudication and in avoiding the extinguishment of a protected claim through the arbitrary operation of court-controlled procedures.

Every barrier Appellants face here arises from state judicial action: the clerk of court certified the defective record, the circuit court issued the warning concerning non-lawyer assistance, and this Court set the briefing deadline and the consequence of dismissal for non-compliance.

Under *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), a cause of action is a protected property interest, and the State may not extinguish it through the arbitrary operation of its own procedures. Where the procedures that threaten to extinguish the claim are themselves the product of state judicial action, the State's interest weighs in favor of appointment, not against it. The June 8 Order does not address Logan or the framework it establishes, and does not explain why it does not apply to these facts.

IV. THE ORDER DOES NOT ADDRESS THE COMBINED CIRCUMSTANCES THAT MAKE SELF-REPRESENTATION FUNCTIONALLY IMPOSSIBLE

This is not a case involving an ordinarily capable self-represented litigant seeking a tactical advantage. The motion presented a combination of circumstances that, taken together, make meaningful self-representation impossible, and the June 8 Order does not engage any of them.

First, Michael Smith is functionally illiterate. The handwritten petition filed March 25, 2024, stating "We cant read and write we need help we are both very sick," was not rhetoric submitted for effect. It is physical evidence, filed in the circuit court record, of Appellants' incapacity to identify controlling authority, frame dispositive legal questions, or prepare a conforming appellate brief without assistance.

Second, the certified record is not merely voluminous. It is corrupted and incomplete. Appellants identified illegible and damaged exhibits confirmed by the Deputy Clerk's own email and the omission of digital evidence submitted below. Without a usable record, even a trained lawyer would face serious difficulty preparing a brief on a defective factual foundation. For functionally illiterate litigants, the problem is dispositive.

Third, the trial court's warning concerning non-lawyer assistance forecloses the only informal help that might otherwise bridge the gap. The circuit court warned on the record that any non-lawyer assisting Appellants does so at his own peril. That warning, entered after proceedings initiated by Respondent, is unrebutted and unaddressed by the June 8 Order. Its combined effect with Appellants' functional illiteracy is a constitutional impossibility: Appellants cannot prepare filings themselves, cannot lawfully receive non-lawyer assistance, and cannot obtain counsel in the market after seven years of effort.

The Order does not explain how this appeal is expected to proceed under those conditions, and no answer to that question exists that does not require either appointment of counsel or abandonment of the claim entirely.

V. THE ORDER DOES NOT ADDRESS THE TRIAL COURT'S UNREBUTTED FINDING THAT COUNSEL IS WARRANTED

The circuit court expressly found that "all of this clearly warrants that Plaintiffs have counsel." That finding was presented to this Court in support of appointment and remains unrebutted by Respondent. Although the trial court's finding does not bind this Court on the separate question of appellate appointment, it is directly relevant. It reflects the direct observation of the presiding circuit judge of Appellants' limitations and of the practical inability of these litigants to proceed without counsel. The June 8 Order does not acknowledge that finding or explain why the circumstances that warranted it below have no bearing on the question of appellate appointment.

VI. THE ORDER DOES NOT ADDRESS THE COMPLEXITY OF THE PRESERVED APPELLATE ISSUES IN RELATION TO THESE APPELLANTS' INCAPACITY

This appeal presents three preserved issues that require legal training, regulatory knowledge, and a complete and usable record to brief competently.

The first is whether the trial court erred in applying a two-inch height differential standard when the SCDOT contract and South Carolina Work Zone Safety Guidelines prohibited a differential exceeding one inch for milled surfaces reopened to traffic. Briefing this issue requires knowledge of how South Carolina courts resolve conflicts between contract provisions, regulatory standards, and the

negligence per se doctrine, and requires access to and comprehension of the full trial record including exhibits Appellants cannot read.

The second is whether a trial court may impose a mandatory expert witness requirement in a negligence per se action based on statutory violations, and whether doing so at summary judgment without prior notice constitutes reversible error. This question has statewide implications for how negligence per se claims are litigated in South Carolina and requires knowledge of how summary judgment procedure intersects with evidentiary standards and the elements of negligence per se under South Carolina law.

The third is whether the trial court misinterpreted the statutory definition of a highway work zone under S.C. Code Section 56-5-1535(F)(1), a question of pure statutory construction that directly controlled the standard of care applied to Respondent and requires knowledge of how definitional provisions function within a negligence per se framework.

The point is not to brief the merits prematurely. It is to demonstrate that this is not a simple appeal that can realistically be presented by litigants who cannot read, who lack legal training, and who are operating from a corrupted and incomplete certified record against experienced appellate counsel with institutional resources. The June 8 Order does not address that mismatch.

VII. A STAY OF THE BRIEFING DEADLINE IS NECESSARY PENDING DISPOSITION OF THIS MOTION

Rule 240(b), SCACR, makes clear that filing a motion does not itself stay time limits absent a court order. Unless the July 8, 2026 deadline is stayed, Appellants will be forced to attempt briefing while this Motion remains pending, and the very injury this Motion seeks to prevent, dismissal for failure to produce a conforming brief that these Appellants are constitutionally and practically incapable of producing, may occur before the Court rules.

A short stay will not prejudice Respondent. The underlying litigation has been pending since 2021 and the merits of the appeal have not yet been briefed by either side. By contrast, denial of a stay risks mooted the request for appointment by allowing the appeal to be dismissed before reconsideration is resolved, permanently extinguishing a protected property interest through the operation of a deadline that this Court controls. The balance of hardships permits only one answer.

VIII. CONCLUSION

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

1. Reconsider and vacate the June 8, 2026 Order denying appointment of counsel;

2. Stay the July 8, 2026 briefing deadline immediately and pending full disposition of this Motion; and
3. Appoint counsel pursuant to the Court's inherent authority as recognized in *Ex parte Dibble* and consistent with the due process considerations addressed in *Lassiter, Mathews v. Eldridge, and Logan v. Zimmerman Brush Co.*

Respectfully submitted,

/s/ Michael Smith
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Dated: June 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2026, I served a true and correct copy of the foregoing MOTION FOR RECONSIDERATION OF ORDER DENYING APPOINTMENT OF COUNSEL, AND MOTION TO STAY BRIEFING DEADLINE PENDING DISPOSITION via email upon:

SC Court of Appeals: ctappfilings@sccourts.org

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June 15, 2026

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