

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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Jun 29 2026

Michael Smith and Mary Smith, Petitioners,

SC Court of Appeals

v.

King Asphalt, Inc., Respondent.

In re: South Carolina Court of Appeals Appellate Case No. 2025-001327

**EMERGENCY MOTION FOR IMMEDIATE STAY OF
BRIEFING DEADLINE
PENDING DISPOSITION OF PETITION TO INVOKE
ORIGINAL JURISDICTION**

Michael and Mary Smith, Petitioners pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

Petitioners Michael and Mary Smith pro se move this Court, pursuant to Rule 240, SCACR, and this Court's supervisory authority under Article V, Section 4 of the South Carolina Constitution, for an immediate stay of the July 8, 2026 briefing deadline in South Carolina Court of Appeals Appellate Case No. 2025-001327, pending disposition of the Petition for Original Jurisdiction filed herewith.

The grounds for this Motion are set out in full in the Petition and are summarized here. By Order dated June 8, 2026, the Court of Appeals denied Petitioners' motion for appointment of counsel, reset the briefing deadline to July 8, 2026, and warned that failure to brief will result in dismissal. By letter dated June 23, 2026, the Court of Appeals declined to act on the motion for reconsideration pursuant to Rule 221(c), SCACR, and confirmed the July 8 deadline.

Petitioners cannot lawfully brief by any means remaining open on this record. Michael Smith is functionally illiterate; a non-lawyer assistance barrier exists on the record of the proceedings below; seven years of effort to obtain counsel through the market have failed; and the appellate record is defective, with approximately 300 of 830 exhibit pages illegible as acknowledged in writing by the Deputy Clerk, and the dispositive digital evidence absent from the record without explanation.

Petitioners are likely to succeed on the merits of the Petition. The Court of Appeals committed plain error of law on a question that does not require this Court to weigh competing considerations. *Ex parte Dibble* does not hold that there is no power to appoint counsel in civil cases. It holds the opposite: that courts possess inherent power to appoint counsel where reasonably necessary to do justice, and that before exercising or declining to exercise that power, a court must make two findings. The Court of Appeals cited *Dibble* for the threshold proposition it recited before announcing that holding, and stopped there. That is not a discretionary judgment about how to apply *Dibble*. It is a misreading of what *Dibble* says. Similarly, Rule

608(g) is by its express terms a directive addressed to circuit and family court judges. Its application to an appellate court exercising inherent power over an appeal pending before it has no textual basis. And *Lassiter* establishes a presumption against a right to counsel in civil cases, not an absolute bar. That presumption is rebuttable where the *Mathews* factors demand counsel for fundamental fairness. The Court of Appeals never conducted that analysis. On a record this clear, the likelihood that this Court will find legal error is not speculative. It is substantial.

Absent a stay, the appeal will be dismissed on July 8, 2026, before this Court can act on the Petition. That dismissal will not be on the merits. It will be a procedural default for failure to brief, compelled not by any failure of diligence; but by circumstances entirely beyond Petitioners' control: state-created barriers to the record, a judicially imposed barrier to non-lawyer assistance, and seven years of sustained opposition by Respondent to every mechanism that would have placed counsel between these Petitioners and dismissal. The default this deadline will produce is the product of those forces, not of Petitioners' choosing. Once entered, it is effectively unreviewable: Rule 221(a), SCACR, bars rehearing, reinstatement under Rule 260 requires good cause that the denial of counsel itself foreclosed, and the merits of Petitioners' preserved issues will never be reached. The Petition will be moot in the way that matters most: the deprivation it seeks to prevent will be complete before this Court can act. A stay preserves the status quo, costs Respondent nothing, and ensures that this Court, not a deadline, decides the questions presented.

The balance of hardships permits only one answer. Respondent faces no prejudice from a short stay; the underlying litigation has been pending since 2021 and no merits briefing has occurred by either side. By contrast, denial of a stay risks mooting the Petition by allowing the appeal to be dismissed before this Court rules,

permanently extinguishing a protected property interest through the operation of a deadline this Court has the power and authority to stay.

Petitioners therefore request that this Court immediately stay the July 8, 2026 briefing deadline and all related deadlines in Court of Appeals Appellate Case No. 2025-001327 pending disposition of the Petition for Original Jurisdiction, and grant such other relief as justice requires.

Respectfully submitted,

/s/ Michael Smith
Michael Smith, Petitioner pro se

/s/ Mary Smith
Mary Smith, Petitioner pro se

220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Dated: June 29, 2026

RULE 240(b) CERTIFICATE OF CONSULTATION

Pursuant to Rule 240(b), SCACR, the undersigned certifies as follows:

On June 25, 2026, Petitioner Michael Smith contacted Catharine Garbee Griffin, Esq., counsel of record for Respondent King Asphalt, Inc., at CGriffin@brblegal.com, to advise counsel of Petitioners' intent to file this EMERGENCY MOTION FOR IMMEDIATE STAY OF BRIEFING DEADLINE PENDING DISPOSITION OF PETITION TO INVOKE ORIGINAL JURISDICTION and to ascertain Respondent's position.

As of the time of filing on June 29, 2026, Petitioners have received no response from Ms. Griffin. Given the imminence of the July 8, 2026 briefing deadline and the irreversible consequences of dismissal, Petitioners file this Motion without awaiting further response. Respondent's position is unknown.

A copy of that correspondence is attached hereto (Exhibit A) and incorporated by reference.

/s/ Michael Smith
Michael Smith, Petitioner pro se

Dated: June 29, 2026

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2026, I served a true and correct copy of the foregoing EMERGENCY MOTION FOR IMMEDIATE STAY OF BRIEFING DEADLINE PENDING DISPOSITION OF PETITION TO INVOKE ORIGINAL JURISDICTION with Exhibit A upon:

Clerk, Supreme Court of South Carolina: supctfilings@sccourts.org (original, with proof of service)

Clerk, South Carolina Court of Appeals: ctappfilings@sccourts.org (courtesy copy)

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

/s/ Michael Smith
Michael Smith, Petitioner pro se

/s/ Mary Smith
Mary Smith, Petitioner pro se

Dated: June 29, 2026

RECEIVED
Jun 29 2026
SC Court of Appeals

Exhibit 1: 240b consultation - CGG - 6 25 2026 - email



submitted - RULE 240(b) CERTIFICATE OF CONSULTATION

From "Michael Smith" <MichaelDSmith@housemail.com>
To CGriffin@brblegal.com, TKowalewski@brblegal.com
Date 06/25/2026 11:29 PM

Ms. Griffin,

Pursuant to Rule 240(b), SCACR, the undersigned certifies as follows:

On June 25, 2026, Petitioner Michael Smith contacted Catharine Garbee Griffin, Esq., counsel of record for Respondent King Asphalt, Inc., at CGriffin@brblegal.com, to advise her of Petitioners' intent to file this Motion for Immediate Stay of Briefing Deadline and to ascertain Respondent's position. Please advise ASAP as filing is imminent.

MOTION FOR IMMEDIATE STAY OF BRIEFING DEADLINE PENDING DISPOSITION OF PETITION FOR ORIGINAL JURISDICTION

Petitioners Michael and Mary Smith move this Court, pursuant to Rule 240, SCACR, and this Court's supervisory authority under Article V, Section 4 of the South Carolina Constitution, for an immediate stay of the July 8, 2026 briefing deadline in South Carolina Court of Appeals Appellate Case No. 2025-001327, pending disposition of the Petition for Original Jurisdiction filed herewith.

The grounds for this Motion are set out in full in the Petition and are summarized here. By Order dated June 8, 2026, the Court of Appeals denied Petitioners' motion for appointment of counsel, reset the briefing deadline to July 8, 2026, and warned that failure to brief will result in dismissal. By letter dated June 23, 2026, the Court of Appeals declined to act on the motion for reconsideration pursuant to Rule 221(c), SCACR, and confirmed the July 8 deadline.

Petitioners cannot lawfully brief by any means remaining open on this record. Michael Smith is functionally illiterate; a non-lawyer assistance barrier exists on the record of the proceedings below; seven years of effort to obtain counsel through the market have failed; and the appellate record is defective, with approximately 300 of 830 exhibit pages illegible as acknowledged in writing by the Deputy Clerk, and the dispositive digital evidence absent from the record without explanation.

Absent a stay, the appeal will be dismissed on July 8, 2026, before this Court can act on the Petition, and the Petition will be moot in the way that matters most: the deprivation it seeks to prevent will be complete and effectively unreviewable. A stay preserves the status quo, costs Respondent nothing, and ensures that this Court, not a deadline, decides the questions presented.

The balance of hardships permits only one answer. Respondent faces no prejudice from a short stay; the underlying litigation has been pending since 2021 and no merits briefing has occurred by either side. By contrast, denial of a stay risks mooting the Petition by allowing the appeal to be dismissed before this Court rules, permanently extinguishing a protected property interest through the operation of a deadline this Court has the power and authority to stay.

Petitioners therefore request that this Court immediately stay the July 8, 2026 briefing deadline and all related deadlines in Court of Appeals Appellate Case No. 2025-001327 pending disposition of the Petition for Original Jurisdiction, and grant such other relief as justice requires.

Respectfully submitted,

/s/ Michael Smith

/s/ Mary Smith