

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from the Horry County
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2026-001856

LOUIS MICHAEL WINKLER, JR.,..... PETITIONER,

v.

STATE OF SOUTH CAROLINA,.....RESPONDENT.

MOTION TO APPOINT OUTSIDE COUNSEL

The undersigned, Emily Paavola and Allison Franz, respectfully move this Court for the appointment of outside counsel for Petitioner, Louis Michael Winkler, to promote efficiency and conservation of resources, and to allow Petitioner continuity of counsel. In support of this motion, the undersigned submit the following.

INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner was convicted of murder, first-degree burglary, and assault and battery of a high and aggravated nature and sentenced to death by a Horry County jury. *State v. Winkler*, 388 S.C. 574, 698 S.E.2d 596 (2010). On direct appeal, the Supreme Court of South Carolina affirmed the conviction and sentence. *Id.* Petitioner subsequently sought post-conviction relief and this Court assigned the case to the Honorable Benjamin H. Culbertson. Judge Culbertson appointed undersigned attorney Emily Paavola and John Mills to represent Petitioner. The initial evidentiary

hearing took place on June 18–21, 2012, and following appeal, Petitioner’s PCR application was remanded to the circuit court for further proceedings. *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (2016).

On remand, a partial summary judgment hearing took place on May 29, 2019, followed by a supplemental evidentiary hearing on January 29, 2020, and post-hearing briefing by both parties. The circuit court denied post-conviction relief on May 15, 2025. Petitioner filed a Motion to Alter or Amend Judgment, on which the circuit court convened a hearing on October 13, 2025. The circuit court denied the Motion to Alter or Amend on July 22, 2026.

Undersigned attorney Emily Paavola has represented Petitioner since he originally filed his application for post-conviction relief in 2011, and has litigated Petitioner’s case through both his initial evidentiary hearing and remand proceedings. Undersigned attorney Allison Franz was appointed to Petitioner’s case in 2024 and litigated Petitioner’s Motion to Alter or Amend, including arguing the motion in circuit court.

ARGUMENT

I. Judicial Efficiency and Continuity of Counsel

Appointing the undersigned to represent Petitioner on appeal would facilitate judicial efficiency because both attorneys are already familiar with Petitioner’s case. Undersigned counsel represented Petitioner at his post-conviction hearing, prepared post-hearing briefing, and are intimately familiar with the facts and diagnostic issues in Petitioner’s case, including the trial, appeal, and PCR records and the competency evaluations presented at Petitioner’s evidentiary hearing. Petitioner’s case involves complex medical issues, numerous experts, and voluminous medical records with which undersigned counsel is already well-acquainted, and any newly appointed attorney would require significant time to familiarize themselves with the record in

Petitioner's case. In short, appointing the undersigned to represent Petitioner would conserve state resources and serve the interest of judicial economy.

Finally, Petitioner has worked with undersigned counsel for several years and has indicated he desires undersigned counsel to represent him in appeal of the denial of his PCR. While an indigent litigant does not have the right to the initial appointment of counsel of his choice, he has a right to continuity of counsel once he has formed an attorney-client relationship. As one court noted, the attorney-client relationship is not "elementary":

It involves not just the causal assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty. Furthermore, the relationship is independent of the source of compensation, for an attorney's responsibility is to the person he has undertaken to represent rather than to the individual or agency which pays for the service.

Smith v. Superior Court of Los Angeles County, 440 P.2d 65, 74 (Cal. 1968).

II. Request and Legal Authority for Appointment of Two Attorneys

State law is silent on the appropriate number of attorneys to be appointed in a capital appeal of any kind. This Court has the "inherent power to control the order of its business to safeguard the rights of litigants." *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). The Indigent Defense Act similarly recognizes "the discretionary authority of a judge [or court] to appoint counsel in any case. . . ." S.C. Code § 17-3-100. Thus, Petitioner, by and through undersigned counsel, asks this Court to appoint Emily Paavola and Allison Franz to represent him in this capital post-conviction relief appeal. This appointment would comport with the national standard of care in capital cases, state law requirements in all other capital contexts, the common practice of the Office of Appellate Defense, and this Court's appointment practices in prior capital post-conviction relief appeals.

Given the unique finality of a death sentence, it is common practice in all capital case contexts for multiple attorneys to be appointed. The national standard of care in capital cases, as set forth in the American Bar Association’s *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, contemplates “[q]uality representation” in state collateral review proceedings and recognizes that a capital “defense team should consist of no fewer than two attorneys” regardless of the stage of the proceedings. 31 Hofstra L. Rev. 913, 932–35, 952, 955.¹ In all other contexts involving individuals facing a sentence of death, state law mandates the appointment of at least two attorneys. See S.C. Code §§ 16-3-26(B)(1) (mandating the appointment of two attorneys for trial once a notice of intent to seek the death penalty is filed in a case), 17-27-160(B) (mandating the appointment of two attorneys in a capital post-conviction relief action).

In most capital appeals, the Office of Appellate Defense (“OAD”) would be automatically appointed to represent the appellant. S.C. Code § 17-3-360. The automatic appointment allows OAD to determine which and how many of its attorneys to assign to capital cases. In all recent capital appeals handled by OAD, no fewer than two attorneys have been assigned to handle the appeal. *E.g.*, *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (Chief Appellate Defender Robert Michael Dudek and Appellate Defender David Alexander); *State v. Jerome Jenkins*, Appellate Case No. 2019-001280 (Chief Appellate Defender Robert Michael Dudek, Appellate Defender Katherine H. Hudgins, and Appellate Defender Adam Sinclair Ruffin); *State v. Timothy Ray Jones, Jr.*, 440 S.C. 214, 891 S.E.2d 347 (2023) (Chief Appellate Defender Robert Michael

¹ This Court has recognized these guidelines as authoritative on the question of what is required for counsel to be effective in capital cases. *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008); *Ard v. Catoe*, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007).

Dudek, Appellate Defender David Alexander, Appellate Defender Susan Barber Hackett, Appellate Defender Lara M. Caudy, and Appellate Defender Taylor Davis Gilliam).

This practice extends to OAD's staffing on appeals from capital post-conviction relief actions. *E.g.*, *Marion Lindsey v. State*, Appellate Case No. 2019-001271 (Chief Appellate Defender Robert Michael Dudek, Appellate Defender David Alexander, and Appellate Defender Lara M. Caudy); *Richard Bernard Moore v. State*, Appellate Case No. 2011-198472 (Chief Appellate Defender Robert Michael Dudek and Appellate Defender Susan Barber Hackett).

Finally, Petitioner's request is also consistent with this Court's prior practice in capital PCR appeals involving the appointment of outside counsel, in which this Court has appointed two attorneys. *E.g.*, Order Appointing Counsel, *Terry v. State*, No. 2025-001760 (Oct. 21, 2025) (appointing two attorneys); Order Appointing Counsel, *Blackwell v. State*, No. 2025-001377 (Sept. 10, 2025) (appointing two attorneys); Order Appointing Counsel, *Aleksey v. State*, No. 2024-000140 (Mar. 28, 2024); Order Appointing Counsel, *Inmon v. State*, No. 2020-000881 (Aug. 24, 2020) (appointing two attorneys); Order Appointing Outside Counsel, *Finklea v. State*, No. 2019-001104 (Sept. 27, 2019) (appointing two attorneys); Order Appointing Outside Counsel, *Alkebulanyahh v. State*, No. 2019-000529 (Aug. 2, 2019); Order Appointing Counsel, *Bryant v. State*, No. 2019-000610 (May 30, 2019). Given the heightened interest in reliability in capital cases due to the finality of capital punishment, appointment of two attorneys is appropriate in this case. *See Caldwell v. Mississippi*, 472 U.S. 320, 323 (1985) (noting the state's heightened "need for reliability in the determination that death is the appropriate punishment in a specific case" under the Eighth Amendment (quoting *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion))).

CONCLUSION

For the foregoing reasons, undersigned counsel respectfully request that this Court appoint them to represent Petitioner on appeal. Counsel has already requested all relevant transcripts and further requests that the Court hold all other deadlines in abeyance pending its ruling on this Motion.

Respectfully submitted,

/s/ Allison Franz

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