

October 7, 2014

Daniel P. Shearouse  
Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

**RECEIVED**

OCT-9-2014

**S.C. Supreme Court**

Dear Mr. Shearouse

1) Please find enclosed a copy of the first motion to replace Court appointed Attorney Mr. John Delgado

2) I have again had to have Mr. Delgado Relieved based on the attached Record and Inspector's assistance

3) Apparently Mr. Delgado sought to forward correspondence dated September 29, 2014 to your attention for Judicial Guidance. However, he failed to make mention as to the notice he received "firing him"

4) Please Date Stamp 1 Each copy of this correspondence and send (1) back to sender in self addressed postage paid envelope enclosed

Cordially  
Zed O. Brack

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OCT 09 2014

S.C. SUPREME COURT

Received  
DEC 09 2013  
Criminal Defense

UNITED STATES OF AMERICA  
South Carolina  
General Sessions Court  
Richland County

State of South Carolina,  
Plaintiff

Case Numbers I901993, 994, 995,  
996, 997 and 998

-versus-

For: ARSON

Earl Graham,  
Accused.

**MOTION TO REPLACE COURT-APPOINTED ATTORNEY FOR  
INEFFECTIVE ASSISTANCE TO CLIENT**

The Accused, after having been duly sworn to in accordance with law, hereby deposes and states that:

- I. John Delgado, the Accused's court-appointed counsel, has hindered and prevented the Accused from receiving a full, fair, and impartial hearing as a consequence of John Delgado's deliberate and intentionally vexatious actions in this matter.
- II. It is the Accused's belief that John Delgado's misconduct is a serious affront to the administration of justice and brings disrepute upon the legal profession itself. Accordingly, the Accused submits the foregoing motion in support of a formal complaint for Legal Malpractice before the Office of the Disciplinary Council, South Carolina.
- III. John Delgado committed serious breaches of the South Carolina Rules of Professional Conduct, particularly:
  - A. Rule 1.1 – Competence  
*"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."*
  - B. Rule 1.3 – Diligence  
*"A lawyer shall act with reasonable diligence and promptness in representing a client."*

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FILED  
RICHLAND COUNTY

C. Rule 1.4 – Communications

"(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;
- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) Keep the client reasonably informed about the status of the matter;
- (4) Promptly comply with reasonable requests for information; and,
- (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

D. Rule 3.5(a) – Impartiality and Decorum of the Tribunal

"A lawyer shall not:

- (a) Seek to influence a judge, juror, member of the jury venire or other official by means prohibited by law;
- (b) xxx
- (c) xxx"

E. Rule 8.4 – Professional Misconduct

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Commit a criminal act involving moral turpitude;
- \*(d) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (e) Engage in conduct that is prejudicial to the administration of justice;
- (f) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional

*Conduct or other law; or*  
*(g) Knowingly assist a judge or judicial officer in*  
*conduct that is a violation of applicable rules of*  
*judicial conduct or other law.*

- IV. As a result of these transgressions, John Delgado refused the Accused's wishes to represent the latter effectively and in accordance with the Accused's objectives. The Accused has had no say in the representation of this case. John Delgado has unilaterally made all decisions without the freely given, fully informed consent of the Accused.
- \*V. The Accused is indigent, and cannot afford to hire an attorney. The Court has prior knowledge of that indigence.
- VI. Despite this, the Accused cannot continue to work with John Delgado, as the latter is ignorant of the laws, of the court rules, and of court procedure. If the Court expects the Accused to either represent himself or accept inadequate counsel, it would be a denial of due process, as amply held in the case of *Powell vs. State of Alabama* (287 U.S. 45).
- \*VII. By the actions of John Delgado, the Accused has actually been denied of fundamental right to due process of law. John Delgado has allowed established procedures that are inconsistent with statute, rule and policy to prevail in this case rather than presenting a vigorous defense, to the detriment of the Accused.
- VIII. The effect of John Delgado's act of ignoring the Accused's pleas to take certain actions, of presenting no defense but demanding the Accused to stipulate under duress, of making no objections, of raising no appealable issues, of allowing falsified reports and statements to stand un rebutted, of conducting no investigation, and of not acting to insure that the Accused's defense is in accordance with established statutes and regulations have established errors so severe as to deprive the Accused of hearings whose results were fair and reliable.
- IX. Worse, John Delgado never investigated possible biases or previous professional infractions by other parties, nor has even tried to determine the Accused's side of the story.
- X. This deliberate obstructionism on the part of John Delgado resulted in the Accused's denial of substantial and procedural rights to present evidence and witnesses in the defense of the Accused. It likewise forestalled the Accused's right to rebut testimony against his interest.
- XI. By and large, the non-assistance by John Delgado to advance the case of the Accused was so defective that it fell below an

objectionable standard of reasonableness and said deficient performance prejudiced the Accused's defense and deprived the Accused of a fair hearing.

- XII. On numerous occasions, John Delgado has expressed a personal bias against the Accused. It is reasonable to surmise, therefore, that John Delgado either did not believe the Accused's claims of Innocence or deliberately chose to ignore those claims to the detriment of the Accused.
- XIII. Such an abhorrent and repugnant act is a breach of John Delgado's duty of loyalty towards the Accused—which, in legal practice, is the most basic duty of a counsel.
- XIV. Considering these premises, the Accused hereto requests the Court to find that John Delgado has been ineffective to date and to review the procedures and take steps to remedy any defect that John Delgado committed in the conduct of the Accused's trial.
- XV. Hence, the Accused moves that John Delgado be relieved of his duty as court-appointed counsel in the Accused's arson case.
- XVI. The Accused further moves that the Court appoint a new counsel and grant a continuance of trial.

A handwritten signature in black ink, appearing to be 'Earl Graham', written in a cursive style.

EARL GRAHAM  
Accused