

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF ESTATE OF)
VALERIE D'AGOSTINO:)

IN THE PROBATE COURT
PETITION FOR ALLOWANCE OF CLAIM

NICHOLLS & CRAMPTON, P.A.

Petitioner)

CASE NUMBER: 2009ES0700889

vs.

Estate of Valerie D'Agostino

Respondent(s) (if applicable)

FILED
2013 MAY - 9 PM 4:46
PROBATE COURT
BEAUFORT COUNTY, SC

The undersigned petitions the Court to allow the following claims against the estate in the amounts set forth below:

Creditor Name and Address	Amount of Claim
Nicholls & Crampton, P.A. 3700 Glenwood Avenue, Suite 500 Raleigh, NC 27612	\$6,013.00 (Includes interest)

In support of this Petition, Petitioner states that each claim is valid, was presented within the period for the presentation of claims as provided by law, and has not been paid, and, as to those claims which were presented to the Personal Representative and not filed with the Court, that a copy of the statement of each such claim is attached to this Petition and made a part hereof.

(Other:)

1. Memorandum in Support of Petition for Allowance of Claim
 - a. Exhibit A: Signed Engagment Letter
 - b. Exhibit B: Invoice dated 06/08/10-09/23/10
 - c. Exhibit C: Invoice dated 11/30/11
 - d. Exhibit D: Statement of Creditor's Claim (Estate of Richard D'Agostino)
 - e. Exhibit E: Notice of Disallowance of Claim from Rebecca H. Hale
 - f. Exhibit F: Statement of Creditor's Claim (Estate of Valerie D'Agostino)
 - g. Exhibit G: Notice of Disallowance of Claim from J. Ashley Twombly

RECEIVED

OCT 27 2014

Executed this 7 day of May, 2013.

SC Court of Appeals

Signature: Jay A. Mullinax
Name: Jay A. Mullinax, Esquire
Attorney for the Petitioners

Address: _____
Telephone(O): _____
(H): _____
Attorney: Jay A. Mullinax, Esquire
Address: 2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Telephone: (843)-785-6101

ORDER FOR ALLOWANCE OF CLAIM

On the basis of the within Petition and upon hearing for allowance of claims, IT IS HEREBY ORDERED that the following claims against the estate be ALLOWED DISALLOWED in the amounts set forth below:

Creditor Name and Address	Amount of Claim
---------------------------	-----------------

Executed this _____ day of _____, 20____

, Probate Court Judge

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 IN THE MATTER OF ESTATE OF)
 VALERIE D'AGOSTINO:)
)
 NICHOLLS & CRAMPTON, P.A.,)
)
 Petitioner,)
)
 v.)
)
 ESTATE OF VALERIE D' AGOSTINO,)
)
 Respondent.)
 _____)

IN THE PROBATE COURT
 CASE NUMBER: 2009ES0700889

RECEIVED

OCT 27 2014

SC Court of Appeals

**MEMORANDUM IN SUPPORT OF
 PETITION FOR ALLOWANCE OF CLAIM**

2013 MAY -8 PM 1:10
 PROBATE COURT
 BEAUFORT COUNTY, SOUTH CAROLINA
FILED

1. Valerie D' Agostino died on October 17, 2009, domiciled in Beaufort County, South Carolina. She was survived by her husband, Richard D' Agostino, Ronald H. Fisher (son) and Heidi Pallesen (daughter). The Beaufort County Probate Court subsequently appointed Mr. Richard D'Agostino as Personal Representative of his wife's estate.
2. On June 10, 2010, Richard D'Agostino, Personal Representative for the Estate of Valerie D'Agostino, consented to, approved, and signed an Engagement Letter with Nicholls & Crampton, P.A., regarding professional legal service fees, costs, disbursements, and payment policy relating to the Engagement Letter's subject: "Estate of Valerie D'Agostino". (A copy of the signed Engagement Letter is attached as **Exhibit A.**)
3. The payment policy in the Nicholls & Crampton, P.A. Engagement Letter approved and signed by Richard D' Agostino on June 10, 2010 states "We will send you detailed, itemized monthly bills reflecting our charges. All statements sent to you are payable within thirty (30) days. Any charges not paid within said thirty days will accrue interest from the due date at the rate of one and one-half (1 ½) percent per month until paid".
4. Legal Services rendered for Mr. D'Agostino relating to actions taken related to his responsibility as Personal Representative of the Estate of Valerie D'Agostino are dated

June 8, 2010 through September 23, 2010 resulting in fees of \$13,289.75; Nicholls & Crampton, P.A. received three checks from Mr. D'Agostino in payment for its services:

- i. 7/16/10 – Payment- Check # 13894 for \$1,500.00
- ii. 9/23/10 – Payment - Check # 1803 for \$1,200.00
- iii. 9/23/10 – Payment - Check #14006 for \$6,800.00

Total = \$9,500.00

(A copy of this invoice is attached as **Exhibit B.**)

5. Therefore, Mr. D'Agostino paid \$9,500.00 towards his charges of \$13,289.75, leaving a remaining balance of \$3,789.75.
6. Richard D' Agostino ("Decedent") died on April 11, 2011.
7. Christopher D'Agostino subsequently petitioned the Probate Court for the State of South Carolina, County of Beaufort, to open the Estate of Richard D'Agostino.
8. The Court, thereafter, appointed Mr. Christopher D' Agostino, as the Personal Representative of his father's estate.
9. Nicholls & Crampton, P.A., made demands upon Mr. Richard D' Agostino prior to his death, and on Christopher D' Agostino, as Personal Representative of Estate of Richard J. D'Agostino, for payment of an outstanding balance for services provided to Mr. D'Agostino that were related to the Estate of Valerie D'Agostino.
10. Despite Nicholls & Crampton P.A. demands, Richard D'Agostino and Christopher D' Agostino, as Personal Representative of Estate of Richard J. D'Agostino failed and refused to pay the outstanding balance for services provided by or expenses paid and incurred by Petitioner.
11. As of November 30, 2011, Mr. D'Agostino's invoice had a remaining principle of \$3,789.75, plus an accumulated interest charge of \$753.19 resulting in a total balance of \$4,542.94. (A copy of this invoice is attached as **Exhibit C.**)

12. Nicholls & Crampton, P.A. filed a Statement of Creditor's Claim against the Estate of Richard D'Agostino on December 27, 2011 for \$4,542.94 for legal services (including interest) rendered to Richard D'Agostino. (A copy of Creditor's Claim is attached as **Exhibit D.**)

13. On January 10, 2012, a Notice for Disallowance of Claim was executed by Rebecca H. Hale of Hale & Bolchoz, L.L.C., and signed by Christopher D' Agostino disallowing the claim against the Estate of Richard D'Agostino for \$4,542.94. The Notice of Disallowance of Claim included the following statement:

This claim represents fees due from the Estate of Valerie D' Agostino, 2009ES07889, whereby decedent was serving as Personal Representative. These fees are due from that estate rather than the decedent's estate. The engagement letter signed by decedent did not in anyway make him personally liable for such fees, and therefore his estate is not liable for such payment either. Furthermore based on information and belief there is enough money in the Estate of Valerie D' Agostino to pay such fees.

(A copy of the Disallowance of Claim and Proof of Delivery is attached as **Exhibit E.**)

14. The Beaufort County Probate Court subsequently dismissed the Petitioner's claim against the Estate of Richard D'Agostino.

15. On September 26, 2013, Petitioner filed a Statement of Creditor's Claim against the Estate of Valerie D'Agostino in the amount of \$3,789.75, plus interest and attorney fees, for "legal services provided to Richard J. D'Agostino as Personal Representative of the Estate of Valerie D' Agostino." (A copy of Statement of Creditor's Claim is attached as **Exhibit F.**)

16. On April 8, 2013, Respondent's counsel, J. Ashley Twombly of Twenge & Twombly Law Firm mailed to Petitioner, Nicholls & Crampton, P.A., and its counsel a Notice of Disallowance of Petitioner's claim in its entirety. The Notice of Disallowance included the following statement:

Richard D' Agostino was contracted with Nicholls & Crampton, P.A. personally and not in his representative capacity as the Personal Representative of the Estate of Valerie D' Agostino. Because the services you provided were provided to Richard D' Agostino personally, the Estate of Valerie D' Agostino is not responsible for paying the fees associated with that representation.

(A copy of the Disallowance of Claim and Proof of Delivery is attached as **Exhibit G**.)

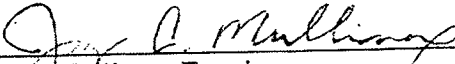
17. The Respondent provides no evidence of his allegations.
18. Conversely, the Petitioner has provided the Court with the following prima facie evidence of its claim: An engagement letter (with the subject matter: Estate of Valerie D'Agostino and details of the services and charges) signed by the Respondent and Petitioner; detailed invoices with time entries and subject matter exclusively related to the administration of the Estate of Valerie D'Agostino; a Court filing by an attorney (Rebecca Hales) representing Richard D' Agostino which alleges that the Estate of Valerie D'Agostino owes the claim.
19. The remaining principle balance of \$3,789.75 has accrued interest since Sept, 23, 2010 at the rate of one and one-half (1½) percent per month, in accordance with the referenced engagement letter and its terms (as proscribed in South Carolina Code of Laws §62-3-806(d)), resulting in the principal and interest total amount of \$6,013.00 (through May 1, 2013, representing 31 months of interest)
20. Decedent, Mr. Richard J. D'Agostino, Personal Representative of the Estate of Valerie D'Agostino, knowingly accepted the benefits of the services provided by and expenses incurred by Petitioner.
21. The services provided by the Petitioner, Nicholls & Crampton, P.A., resulted in the following benefits to the estate: Dismissal of unnecessary and improper venue of estate administration in North Carolina (with anticipated ancillary estate administration in South Carolina); proper efficient venue for estate; reduction in administrative costs of dual

estate administrations; recovering of attorney fees from another law firm for improper venue proceedings in North Carolina.

22. The hourly rates and interest are in accordance with the engagement letter and the services provided by the Petitioner, Nicholls & Crampton, P.A., as outlined and described in the invoice entries, are reasonably worth \$3,789.75, plus interest of \$2,223.25, resulting in the total amount of \$6,013.00. The Respondent has provided no evidence to the contrary.
23. The Petitioner made every reasonable effort to negotiate a settlement with the Respondent, even though the Petitioner was excluded from all negotiations with other parties during several months of a negotiated "global settlement" to settle all matters related to this case. In fact, the Petitioner provided a specific number in settlement and welcomed the Respondent to provide a counter offer. The Respondent provided no counter offer.
24. The Petitioner withdraws its claim regarding attorney fees related to this action. Although the contract was made with a North Carolina law firm, related to a matter initiated in a North Carolina court, and North Carolina courts have awarded attorney fees with similar criteria, the effort to prosecute the claim outweighs the prospect for equity to be achieved. Likewise, the effort to prosecute a companion claim under South Carolina law, which specifically proscribes the allowance of attorney fees, outweighs the prospect for equity to be achieved for the Petitioner. It should be noted that the Respondent never produced, cited, or directed Petitioner to any support for Respondent's position in regard to this matter.
25. The Petitioner respectfully prays that this Court, consider the foregoing and grant the Petitioner's claim based on the evidence presented.

Respectfully submitted,

LAW OFFICE OF JAY A. MULLINAX, LLC


Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Tel: (843) 785-6101
Fax: (843) 785-6104
Attorney for the Petitioner

Dated: May 7, 2013
Hilton Head Island, South Carolina

FILED

EXHIBIT" A 00

2013 MAY -8 PM 4:46

PROBATE COURT
NICHOLLS & GRAMPTON, P. A.

ATTORNEYS AT LAW

3700 Glenwood Avenue
Suite 500
Raleigh, North Carolina 27612

PO Box 18237
Raleigh, North Carolina 27619

Telephone: (919) 781-1311

Facsimile: (919) 782-0465

June 8, 2010

Mr. Rich D'Agostino
c/o Anthony E. Griffis, Esq.
322 Moss Creek Village Drive
Hilton Head Island, SC 29926

via: giffis@hargray.com

Re: Estate of Valerie V. D'Agostino

Dear Mr. D'Agostino

1. Scope of Representation. You have requested that we provide legal services on your behalf in connection with the administration of your deceased wife's estate in Wake County, NC (the "Matter").

2. Professional Service. Our services in the Matter will be provided at our existing hourly rates for the lawyers and paralegals who will be working on the Matter as follows:

Senior Attorneys	\$275 per hour
Associate Attorneys	\$200 per hour
Certified Paralegals	\$135 per hour
Legal Assistants	\$ 80 per hour

Our services shall include, without limitation, our time to review and draft of documents, legal research, depositions, mediation, settlement discussions, court appearances, appearances before the Clerk, conferences, and any other tasks necessary to represent you in the Matter.

3. Retainer. In consideration of the services performed, or to be performed, you shall wire transfer to us the sum of One Thousand Five Hundred Dollars (\$1,500) as a retainer. This amount will be credited, from time to time, as a payment on account of our services and expenses incurred. This retainer is not an estimate of anticipated fees in this matter. In the event that the hours expended in the Matter are less than the total retainer, we will refund the balance to you.

4. Costs and Disbursements. You are also responsible for all necessary and reasonable costs and expenses incurred or paid out in the performance of our services. We will bill you, or ask you to pay directly, for out-of-pocket costs. These costs and expenses shall include, but not be limited to: expert witness

charges, travel expenses, duplication expenses, transmittal charges, long distance charges, courier charges, and any other necessary expenses. If we advance any costs or expenses, you shall reimburse us upon our furnishing you information as to the amount unless said amount can be charged against any available retainer remaining in your account.

5. Payment Policy. We will send you detailed, itemized monthly bills reflecting our charges. All statements sent to you are payable within thirty (30) days. Any charges not paid within said thirty days will accrue interest from the due date at the rate of one and one-half (1 ½) percent per month until paid.

6. Discharge or Withdrawal. You have the right to discharge us for any reason at any time. We reserve the right to withdraw from representing you at any time. Upon termination, for any reason, we will promptly turn over your file to you upon request, however, you will remain responsible for all fees and costs incurred through the date of termination, but payment of our final statement shall not be a precondition to the release of your file.

7. Disclaimer. In representing you in this matter, we cannot and do not warrant or predict results or final developments. Be assured that it is our desire to afford you conscientious, faithful, and diligent service, seeking at all times to achieve solutions that are just and reasonable to you.

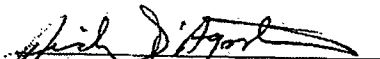
If the foregoing meets with approval, kindly signify consent and approval by having the agreement signed in the space provided below, insert the date, and return the original of this letter to us, along with the retainer fee.

Sincerely,

NICHOLLS & CRAMPTON, P. A.

/s/ Tim Nicholls

CONSENTED TO AND APPROVED


Rich D'Agostino
June 12, 2010

In Account With
NICHOLLS & CRAMPTON, P.A.
ATTORNEYS AT LAW

3700 Glenwood Avenue - Suite 500
 Post Office Box 18237
 Raleigh, North Carolina 27612
 Telephone: 919/781-1311 Fax: 919/782-0465

Federal ID #
 56-1201204

Rich D'Agostino
 c/o Anthony E. Griffin, Esq.
 322 Moss Creek Village Drive
 Hilton Head Island, SC 29926

Invoice Date: September 23, 2010
 Invoice No. 108938
 Client/Matter ID: 102245.001

RE: FTN - VALERIE D'AGOSTINO ESTATE

Amount Paid:

2013 MAY - 8 PM 4:16
 PROPRATE COUNTY
 BEAUFORT COUNTY, NC
FILED

For legal services rendered, including but not limited to

Date	Initials	Description	Hours	Amount
06/08/2010	NIC	Telephone conference with Mr. Griffis re: estate; draft engagement letter.	0.80	220.00
06/09/2010	PAR	Obtain documents from Estates Division.	1.20	162.00
06/10/2010	NIC	Review guardianship and estate filings; e-mail Mr. Griffis.	0.70	192.50
06/11/2010	NIC	Conference with associate re: procedural matters; review intestacy law.	0.70	192.50
	NIC	Telephone conference with Mr. Griffis; telephone call with Mr. Alexander; call Mr. Belcher.	1.20	330.00
06/14/2010	NIC	Review and respond to Mr. Garris's e-mail.	0.20	55.00
06/21/2010	NIC	Telephone conference with Mr. Griffis; telephone conference with Assistant Clerk of Court; conference with Mr. Dombalis; review Hearing Notice; e-mail Mr. Belcher.	1.10	302.50
	DOM	Conference with Mr. Nicholls re: strategy; review memo to Charlotte attorney.	0.70	192.50
06/22/2010	NIC	Revise and finalize e-mail to Charlotte attorney; e-mail to Mr. Griffis; conference with intern re: domicile.	1.10	302.50
06/24/2010	NIC	Draft fax to Mr. Alexander; e-mail to Mr. Griffis.	0.80	220.00
07/01/2010	NIC	Telephone conference with Mr. D'Agostino; review letter from D. Alexander.	0.50	137.50
07/02/2010	DOM	Draft Motion for Sanctions.	0.70	192.50
	NIC	Conference with Mr. Dombalis; review and file Motion for Sanctions.	0.70	192.50

A finance charge is computed on account balances unpaid 30 days after the billing date at a periodic rate of 1 1/2% per month (Annual percentage rate of 18%)

Rich D'Agostino
RE: FTN - VALERIE D'AGOSTINO ESTATE

Invoice Date: 09/23/2010
Invoice No. 108938
Client/Matter ID. 102245.001

			Hours	
	DOM	Conference with Mr. Nicholls.	0.30	82.50
07/07/2010	NIC	Review e-mails from Mr. Garris; conference with Mr. Dombalis re: strategy; telephone conference with Mr. Garris; telephone conference with Mr. D'Agostino; research.	1.20	330.00
	DOM	Conference with Mr. Nicholls; telephone conference with South Carolina counsel and Mr. Nicholls.	0.50	137.50
07/08/2010	NIC	Review file in preparation for hearing; telephone conference with Messrs. Dombalis and Garris; telephone conference with Mr. Glass; telephone conference with Mr. D'Agostino; research jurisdiction and other matters for hearing.	7.50	2,062.50
	DOM	Telephone conference with Mr. Nicholls and South Carolina counsel.	1.30	357.50
07/09/2010	PAR	Preparation of all Qualification Documents; meeting with Mr. Nicholls re: estate administration.	1.80	243.00
	PAR	Draft application, Oath, etc. for Mr. D'Agostino.	1.80	243.00
	NIC	Conference with Mr. Dombalis; telephone conference with Mr. Griffis; telephone conference with Mr. D'Agostino; review application, etc.	1.40	385.00
	DOM	Conference with Mr. Nicholls.	0.20	55.00
07/12/2010	NIC	Review Petition and Exhibits; telephone conferences with Messrs. D'Agostino, Griffis and Glass; prepare for hearing before Clerk.	2.10	577.50
	NIC	Hearing before Clerk; e-mail Mr. Garris; telephone conference with Mr. D'Agostino.	1.80	495.00
07/13/2010	NIC	Draft amendment to Motion for Sanctions; telephone conference with Mr. D'Agostino.	0.60	165.00
07/14/2010	DOM	Review and comment on amendment to motion.	0.30	82.50
	NIC	Various e-mails to Messrs. Griffis and Glass; telephone conference with Mr. Alexander; draft Notice of Hearing.	1.30	357.50
07/16/2010	NIC	Conference with paralegal.	0.50	137.50
	PAR	Conference with Mr. Nicholls re: filing Application for letters.	0.50	67.50
	NIC	Telephone conference with Mr. Griffis and Mr. Glass; review Alexander e-mail.	0.50	137.50
	PAR	Meeting with Mr. Nicholls re: qualification documents.	0.60	81.00
07/17/2010	NIC	Prepare for hearing.	1.00	275.00
07/18/2010	NIC	Prepare for hearing.	1.60	440.00

A finance charge is computed on account balances unpaid 30 days after the billing date at a periodic rate of 1 1/2% per month (Annual percentage rate of 18%)

Rich D'Agostino
RE: FTN - VALERIE D'AGOSTINO ESTATE

Invoice Date: 09/23/2010
Invoice No. 108938
Client/Matter ID. 102245.001

			Hours	
07/19/2010	NIC	Prepare for hearing; various telephone conferences with Messrs. Griffis and Alexander; conference with Mr. Dombalis; revise motion for sanctions.	3.00	825.00
	DOM	Various conferences with Mr. Nicholls re: sanctions.	1.00	275.00
	DOM	Review sanction case law; conference with Mr. Nicholls re: same.	0.05	13.75
07/22/2010	NIC	Various telephone conferences with Messrs. Glass, Alexander and Griffis re: settlement; draft e-mail re: settlement.	2:30	632.50
07/23/2010	NIC	Various e-mails re: continuance of hearing.	0:40	110.00
07/27/2010	NIC	Respond to Mr. Griffis.	0.20	55.00
07/29/2010	NIC	Review and revise Settlement Agreement; e-mail Mr. Griffis; telephone conference with Mr. Griffis; revise Agreement and e-mails; various e-mails; telephone conference with Assistant Clerk.	2.30	632.50
08/02/2010	NIC	Revise Agreement; respond to Mr. Alexander's e-mail re: changes.	0.20	55.00
08/09/2010	NIC	Review and reply to various e-mails.	0.70	192.50
08/12/2010	NIC	Review and respond to Mr. Glass e-mail and Mr. Griffis e-mail.	0.40	110.00
08/13/2010	NIC	Conference with Messrs. Griffis and Glass re: changes to Settlement Agreement; review revised Agreement.	0.80	220.00
09/01/2010	NIC	Review and respond to various e-mails re: settlement.	0.30	82.50
09/10/2010	NIC	Various e-mail communications re: settlement.	0.80	220.00
09/17/2010	NIC	Review various emails.	0.30	82.50
09/20/2010	NIC	Review and respond to various emails.	0.40	110.00
09/23/2010	NIC	Prepare and file withdrawal of motion; various emails.	0.70	192.50
FEES BILLED			51.05	13,212.75

FEE SUMMARY

Timekeeper	Hours	Rate	Total
F T Nicholls	40.10	\$275.00	\$11,027.50
N J Dombalis	5.05	275.00	1,388.75
L C Connolly	5.90	135.00	796.50

A finance charge is computed on account balances unpaid 30 days after the billing date at a periodic rate of 1 1/2% per month (Annual percentage rate of 18%)

Rich D'Agostino
RE: FTN - VALERIE D'AGOSTINO ESTATE

Invoice Date: 09/23/2010
Invoice No. 108938
Client/Matter ID. 102245.001

DISBURSEMENTS

	Copies, Parking	30.00
	Federal Express charges	22.00
	Delivery charge	25.00
	TOTAL DISBURSEMENTS through 07/09/2010	<u>77.00</u>
	TOTAL FEES AND DISBURSEMENTS THIS INVOICE	13,289.75
07/16/2010	Payment-Check # 13894	-1,500.00
09/23/2010	Payment-Check # 1803	-1,200.00
09/23/2010	Payment-Check # 14006	-6,800.00
	Total Payments	-9,500.00
	BALANCE DUE	<u>\$3,789.75</u>

A finance charge is computed on account balances unpaid 30 days
after the billing date at a periodic rate of 1 1/2% per month (Annual percentage rate of 18%)

FILED

EXHIBIT

C

00

In Account With

2013 MAY ~~NICHOLLS~~ & CRAMPTON, P.A.

ATTORNEYS AT LAW

PROBATE COURT BEAUFORT COUNTY, SC
3700 Glenwood Avenue - Suite 500
Post Office Box 18237
Raleigh, North Carolina 27612

Telephone: 919/781-1311 Fax: 919/782-0465

Federal ID #
56-1201204

Rich D'Agostino
c/o Anthony E. Griffin, Esq.
322 Moss Creek Village Drive
Hilton Head Island, SC 29926

Invoice Date: November 30, 2011
Invoice No. 117498
Client/Matter ID: 102245.001

RE: FTN - VALÉRIE D'AGOSTINO ESTATE

Amount Paid: _____

For legal services rendered, including but not limited to

PREVIOUS BALANCE	\$4,488.74
Finance Charge	54.20
BALANCE DUE	<u>\$4,542.94</u>

A finance charge is computed on account balances unpaid 30 days after the billing date at a periodic rate of 1 1/2% per month (Annual percentage rate of 18%)

EXHIBIT D 00

FILED

STATE OF SOUTH CAROLINA

COUNTY OF: BEAUFORT

2013 MAY -8) PM 4: 47

IN THE PROBATE COURT

IN THE MATTER OF: RICHARD J. D'AGOSTINO

PROBATE COURT
BEAUFORT COUNTY, SC

STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2011ES0700406

Decedent's Date of Death (if known): 04/11/2011

Decedent's Last Mailing Address: 15 Sebring Drive, Bluffton, SC 29909

Creditor: Nicholls & Crampton, P. A.
Address: 3700 Glenwood Avenue, Suite 500
Raleigh, NC 27612
Telephone: 919-781-1311

Basis of claim:

Legal services rendered in the Estate of Valerie D'Agostino for decedent Richard D'Agostino pursuant to engagement letter attached; decedent agreed to be personally liable for said fees in the event fees were not paid by the Estate of Valerie D;Agostino

Amount of claim \$ 4,642.94

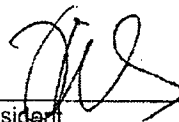
Date claim will become due (if not already due): Claim due as of 9/23/, 2010 when last services rendered.

Nature of uncertainty as to amount of claim and due date, if any:

N/A

Description of any security as to claim:

None

Signature: 
Title: President
Date: December 27, 2011

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page.)

EXHIBIT " E "

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: Estate of Richard J.)
D'Agostino)

IN THE PROBATE COURT
NOTICE OF DISALLOWANCE OF CLAIM

CASE NUMBER: 2011ES0700406

TO:

Name: F. Timothy Nicholls, Esquire
Address: PO Box 18237
Raleigh, NC 27610

2013 MAY -8 PM 4:17
PROBATE COURT
BEAUFORT COUNTY, SC
FILED

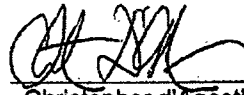
The undersigned, as the Personal Representative(s)/Conservator(s) appointed to administer this estate, disallows \$ 4,542.94 of your claim for \$4,542.94 presented on 1/2/12.

Your claim was disallowed for the following reason(s):

This claim represents fees due from the Estate of Valerie D'Agostino, 2009ES07889, whereby decedent was serving as Personal Representative. These fees are due from that estate rather than the decedent's estate. The engagement letter signed by decedent did not in anyway make him personally liable for such fees, and therefore his estate is not liable for such payment either. Furthermore based on information and belief there is enough money in the Estate of Valerie D'Agostino to pay such fees.

Failure to protest this disallowance of your claim, (that is, failing to file your petition for its allowance (form #373PC) in the Probate Court and failing to commence a proceeding on the claim within thirty days after the mailing of this Notice of Disallowance of Claim), shall result in your claim or the disallowed portion of your claim being forever barred.

Executed this 10th day of Jan, , 20

Signature: 
Name: Christopher d'Agostino
Address: 13710 Trinity Leaf Place
Riverview, FL 33579
E-mail:
Telephone (O): 813 393-4576
(H): 813 677-0284

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: ESTATE OF RICHARD J.)
D'AGOSTINO)

IN THE PROBATE COURT
PROOF OF DELIVERY

) CASE NUMBER: 2011ES070406

On the 7th day of June, 2011, I mailed or delivered the following document, Notice of Dissallowance of Claim of Anthony E. Griffis, and Notice of Dissallowance of Claim of F. Timothy Nicholls, Esquire

- A copy of which is attached hereto and incorporated herein, or
 The original of which is on file with the court and incorporated herein,

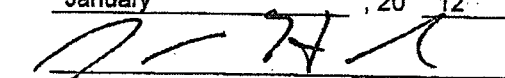
Delivery was accomplished by the following method (check appropriate box):

- personal delivery ordinary first class mail
 certified mail registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
J. Ashley Twombly, Esquire	311 Carteret Street, Beaufort, SC 29902
Anthony E. Griffis, Esquire	355 Park Avenue, SW, Aiken, SC 29801
F. Timothy Nicholls, Esquire	3700 Glenwood Avenue, Suite 500, Raleigh, NC 27612

SWORN to before me this 12 day of
January, 2012


Notary Public for South Carolina
My Commission Expires: 12/12/16

Signature: Rebecca H. Hale
Name: Rebecca H. Hale, Esquire
Address: PO Box 22561
Hilton Head Island, SC 29925
Telephone (O): (843) 837-3000
(H):
E-mail: rhalehaleandboichoiz.com

Signature: _____
Name: _____
Address: _____

Telephone (O): _____
(H): _____
E-mail: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: The Estate of Valerie)
D'Agostino)

IN THE PROBATE COURT
STATEMENT OF CREDITOR'S CLAIM

CASE NUMBER: 2009ES0700889

Decedent's Date of Death (if known): October 17, 2009
Decedent's Last Mailing Address: 15 Sebring Drive, Bluffton, SC 29909

PROBATE COURT
BEAUFORT COUNTY, SC
2013 MAY -8 PM 4:47

FILED

Creditor: Nicholls & Crampton, P.A.
Address: c/o Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Telephone: (843) 785-6101

Basis of claim:

Legal services provided to Richard J. D'Agostino as Personal Representative of the Estate of Valerie D'Agostino.

Amount of claim \$ \$3,789.75 plus interest and attorney fees

Date claim will become due (if not already due): . 20

Nature of uncertainty as to amount of claim and due date, if any:

Description of any security as to claim:

Signature: *Jay A. Mullinax*
Title: Jay A. Mullinax, Esquire
Date: September 26, 2012

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page.)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE COURT

IN THE MATTER OF THE ESTATE OF VALERIE D'AGOSTINO, DECEASED
CASE NUMBER: 2009ES0700889

PROOF OF DELIVERY

On the 26 day of September, 2012, I mailed or delivered a copy of the Statement of Creditor's Claim,

- A copy of which is attached hereto and incorporated herein, or
 The original is on file with the court and incorporated herein.

Delivery was accomplished by the following method (check appropriate box):

- Personal delivery Ordinary First Class Mail
 Certified Mail with Return Receipt requested Registered Mail

to each of the following persons at the addresses shown:

J. Ashley Twombly, Esquire Twenge & Twombly, LLC
311 Carteret Street
Beaufort, SC 29902

LAW OFFICE OF JAY A. MULLINAX, LLC

By: Jay A. Mullinax

Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC, 29928
843-785-6101
Attorney for the Estate

SWORN to before me this 26 day
of September, 2012.

[Signature]
Notary Public for South Carolina
My Commission Expires: 10/14/19

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: ESTATE OF)
VALERIE D'AGOSTINO)

IN THE PROBATE COURT
NOTICE OF DISALLOWANCE OF CLAIM

CASE NUMBER: 2009ES0700889

2013 MAY - 8 PM 4:17
PROBATE COURT
BEAUFORT COUNTY, SC

FILED

TO:

Name: Nicholls & Crampton, P.A.
Address: c/o Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head, SC 29928

The undersigned, as the Personal Representative(s)/Conservator(s) appointed to administer this estate, disallows \$ 3,789.75 plus claimed interest and claimed attorney fees of your claim for \$3,789.75 plus interest and attorney fees presented on September 26, 2012.

Your claim was disallowed for the following reason(s):

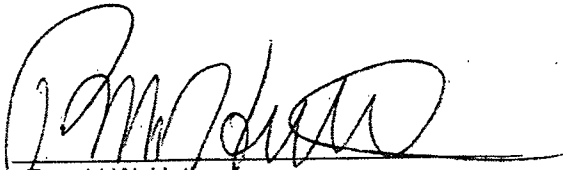
Richard D'Agostino contracted with Nicholls & Crampton, P.A. personally and not in his representative capacity as the Personal Representative of the Estate of Valerie D'Agostino. Because the services you provided were provided to Richard D'Agostino personally, the Estate of Valerie D'Agostino is not responsible for paying the fees associated with that representation.

In addition, the amount of the claim is unreasonable in light of the service that was provided.

Finally, under no circumstances would anyone be responsible for paying the attorney's fees Claimant's lawyer (Jay A. Mullinax) incurred in attempting to pursue this claim. Significantly, Claimant and his attorney have repeatedly been asked to identify any case, statute or other legal principal that would allow Claimant to recover attorney's fees incurred in filing and pursuing a probate creditor's claim. Despite numerous requests, Claimant has been unable to produce, cite, direct or otherwise reference any authority to support Claimant's claim for attorney's fees on top of the face amount of his creditor's claim. Claimant has been warned in writing numerous times, pursuant to South Carolina Rules of Civil Procedure 11 and other relevant law, that he must have a legitimate basis in law and fact to advance his claim for attorney's fees.

Failure to protest this disallowance of your claim, (that is, failing to file your petition for its allowance (form #373PC) in the Probate Court and failing to commence a proceeding on the claim within thirty days after the mailing of this Notice of Disallowance of Claim), shall result in your claim or the disallowed portion of your claim being forever barred.

Executed this day of March , 2013.

Signature: 

Name: Ronald W. Huther

Address: 3402 Tennessee Drive
Alexandria, VA 22303

E-mail: _____

Telephone (O): (240) 486-1703

(H): _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
IN THE MATTER OF: ESTATE OF)
VALERIE D'AGOSTINO)

IN THE PROBATE COURT
FILED
PROOF OF DELIVERY

2013 MAY -8 PM 4:17
CASE NUMBER: 2009ES0700889

PROBATE COURT
BEAUFORT COUNTY, SC

On the 8th day of April, 2013, I mailed or delivered the following document, Notice of Disallowance of Claim

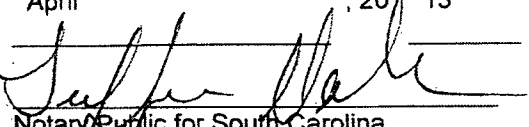
- A copy of which is attached hereto and incorporated herein, or
 The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

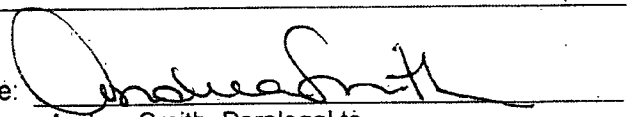
- personal delivery ordinary first class mail
 certified mail registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
Jay A. Mullinax, Esquire	2 Park Lane, Ste 303, Hilton Head, SC 29910
Anthony E. Griffis, Esquire	10 Fording Island Road Extension, Hilton Head, SC 29926
Sean M. Bolchoz, Esquire	P.O. Box 828, Bluffton, SC 29910

SWORN to before me this 8th day of April, 2013

Notary Public for South Carolina
My Commission Expires: _____



Signature: 
Name: Andrea Smith, Paralegal to
Twenge + Twombly Law Firm
Address: 311 Carteret Street
Beaufort, SC 29902
Telephone (O): _____
(H): (843) 982-0100
E-mail: andrea@twlawfirm.com

Signature: _____
Name: _____
Address: _____

Telephone (O): _____
(H): _____
E-mail: _____

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE COURT

IN THE MATTER OF THE ESTATE OF VALERIE D'AGOSTINO, DECEASED
CASE NUMBER: 2009ES0700889

PROOF OF DELIVERY

On the 8th day of May, 2013, I mailed or delivered a copy of the Summons for the Petition for Allowance of Claim.

- A copy of which is attached hereto and incorporated herein, or
- The original is on file with the court and incorporated herein.

Delivery was accomplished by the following method (check appropriate box):

- Personal delivery Ordinary First Class Mail
- Certified Mail with Return Receipt requested Registered Mail

to each of the following persons at the addresses shown:

Sean Michael Bolchoz, Esquire

Bolchoz Law Firm, PA
6 Buckingham Plantation Drive, Suite B
Post Office Box 828
Bluffton, SC 29910

J. Ashley Twombly, Esquire

Twenge & Twombly Law Firm, L
311 Carteret Street
Beaufort, SC 29902

PROBATE COURT
BEAUFORT COUNTY, SC

2013 MAY -8 PM 4:15

FILED

LAW OFFICE OF JAY A. MULLINAX, LLC

By: Jay A. Mullinax
Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC, 29928
843-785-6101
Attorney for the Petitioner

SWORN to before me this 8 day
of May, 2013.

Buttery
Notary Public for South Carolina
My Commission Expires: 11/30/13

FILED

2013 MAY 15 AM 10:11
PROBATE COURT
BEAUFORT COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
NICHOLLS & CRAMPTON, P.A.)
Pctitioner,)
v.)
THE ESTATE OF)
VALERIE J. D'AGOSTINO)
Respondent.)

IN THE PROBATE COURT
CASE NUMBER: 2009ES0700889

CERTIFICATE OF SERVICE

I, Jay A. Mullinax, do hereby certify that on May 8, 2013, I served a copy of the *Summons and Petition for Allowance of Claim*, by and through serving the below named individual by U.S. Mail:

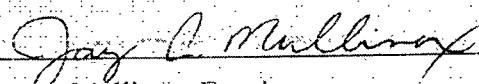
Sean Michael Bolchoz, Esquire

Bolchoz Law Firm, PA
6 Buckingham Plantation Drive, Suite B
Post Office Box 828
Bluffton, SC 29910

J. Ashley Twombly, Esquire

Twenge & Twombly Law Firm, LLC
311 Carteret Street
Beaufort, SC 29902

LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, Esquire
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Tel: (843) 785-6101
Fax: (843) 785-6104
Attorney for the Petitioner

RECEIVED

OCT 27 2014

SC Court of Appeals



October 24, 2014

VIA U.S. POSTAL SERVICE

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

Re: Nicholls & Crampton, P.A., ET AL v. Estate of Valerie D' Agostino, ET AL
Case No. 2013-CP-07-1491

Dear Ms. Kitchings:

As requested in your correspondence dated October 22, 2014, please find enclosed one (1) copy of the original summons and complaint.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

/Enclosure

JAM:kem

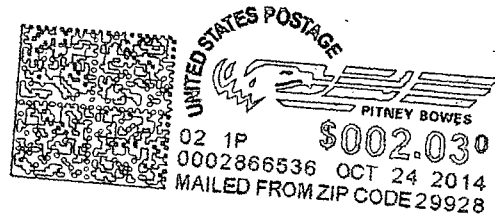
Cc: Mr. J. Ashley Twombly, Esquire

RECEIVED

OCT 27 2014

SC Court of Appeals

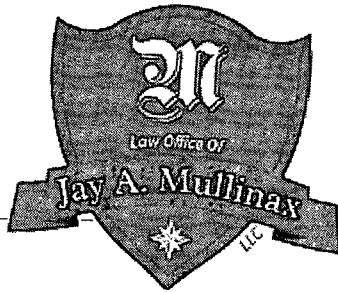
*Chart your course.
Build your legacy.
There's still time.*



RECEIVED

OCT 27 2014

SC Court of Appeals



2 Park Lane, Suite 303
Hilton Head Island, SC 29928

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629