

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-213726

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S.C. Supreme Court

Erika Fabian Appellant,

v.

Ross M. Lindsay, III and Lindsay, LLC, Respondents.

**Motion for Leave to File *Amicus Curiae* Petition for Rehearing and
Grounds for *Amicus Curiae* Petition for Rehearing**

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, the Nelson Mullins Pro Bono Program respectfully requests the permission of this Court to file an *amicus curiae* petition for rehearing in the above-captioned matter currently pending rehearing before this Court. This Court issued its original opinion on October 29, 2014. Respondents Ross M. Lindsay, III and Lindsay, LLC, filed a petition for rehearing with this Court on November 10, 2014. As of the filing of this motion, the Court has not ruled upon Respondents' petition for rehearing. Accordingly, the Nelson Mullins Pro Bono Program ("Nelson Mullins") requests that it be permitted to file a petition prior to the issuance of the Court's decision on rehearing.

In response to the tragic events of September 11, 2001, Nelson Mullins created the Wills for Heroes program as part of its Pro Bono Program. The Wills for Heroes program provides our local heroes—our State's police, fire, and other first responders—

with *pro bono* will preparation services. These first responders devote their lives to serving their communities and are prepared to pay the ultimate price in the line of duty. Unfortunately, those same first responders are underpaid in relation to the dangers faced each day in the line of duty. Having a will prepared free of charge provides comfort for our local first responders as they nobly and selflessly perform their duties while in harm's way. The Wills for Heroes program provides these local heroes the ability to obtain that comfort. Until the creation of Wills for Heroes, no such program existed in our State, and our local first responders were underserved by those they protect each day.

The Wills for Heroes program has been extremely well-received by our State's police, fire, and other first-responders. Lawyers volunteering for the Wills for Heroes program have prepared wills for first responders at events throughout South Carolina, including in Columbia, Camden, Charleston, Myrtle Beach, Greenville, Aiken, and Sumter.¹ The program also drafts wills by appointments throughout the year for first responders as needed.² To date, the program has provided wills to over 1,500 first responders, who otherwise could not afford such legal services. Numerous first

¹ Fortunately, the Wills for Heroes event scheduled for November 11, 2014, did not have to be cancelled due to the fact the new rule adopted in the opinion does not apply until the opinion is final. See Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 23 n.2, 736 S.E.2d 651, 655 (2012) (holding that “[a]n opinion of an appellate court is not final until the remittitur is filed in the lower court . . . and a timely filed petition for rehearing stays the sending of the remittitur, thereby depriving the decision of finality.”)

² Other law firms and attorneys throughout the State have partnered with Nelson Mullins and participated in Wills for Heroes. Likewise, clients of Nelson Mullins have done the same.

responders have noted that they would not have obtained a will but for the Wills for Heroes program.

Thus, your *amici* has an identifiable interest in this matter pursuant to Rule 213 of the South Carolina Appellate Court Rules. Moreover, the *amicus* grounds for rehearing set forth herein warrant the Court's consideration because such grounds demonstrate the severe and unintended consequences of the Court's ruling in this matter.

The Court's opinion threatens the very existence of the Wills for Heroes program and, by extension, prejudices our first responders. Nelson Mullins' attorneys and the other firm attorneys devote their time free of charge to draft the wills for our first responders. As drafted, the opinion exposes these volunteer attorneys with potential lawsuits related to this *pro bono* work and expands potential personal liability to those volunteers. This worthwhile and worthy *pro bono* program should be able to continue serving our local heroes without threat of suit from non-clients, such as the third-party beneficiaries addressed by the opinion.

Unless this Court grants rehearing, this threat of suit against these volunteer attorneys will cause termination of the Wills for Heroes program and deprive our local heroes' access to legal services. The Court could not have intended to curtail access to legal services and terminate worthy *pro bono* efforts by attorneys. As noted by the Supreme Court of Texas, "the greater good is served by preserving a bright-line privity rule[.]" See Barcelo v. Elliott, 923 S.W.2d 575 (Tex. 1996). The Wills for Heroes program is a quintessential example of "the greater good" being protected by the traditional privity rule. This Court overlooked this unintended consequence in

rendering this opinion. Rehearing is warranted to eliminate this result. The Court should continue to adhere to the traditional privity rule. At a minimum, this Court should exempt attorneys drafting wills as part of a pro bono program from the application of the new rule adopted in the opinion.

In lieu of filing a separate petition for rehearing, *amici* has presented its grounds for rehearing in this Motion.³ Your *amici* requests that this Motion be considered its petition in support of rehearing and reversal, should this Court grant this request for leave to file an *amicus curiae* petition. Of course, *amici* will file a separate petition for rehearing pursuant to Rule 213, SCACR, if requested by this Court.

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November 12, 2014

³ Per the above, *amici* has filed the required number of copies per Rule 211, SCACR.

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Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Nelson Mullins Pro Bono Program, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by all by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

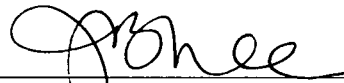
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November 12, 2014