

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2012-213726
Civil Action No. 2012-CP-22-01056

Erika Fabian,..... Appellant,

v.

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

**REPLY IN SUPPORT OF
RESPONDENTS' PETITION FOR REHEARING**

Respondents, Ross M. Lindsay, III and Lindsay & Lindsay, LLC, through their undersigned counsel and pursuant to Rule 240(f), SCACR, submit the following brief Reply in Support of their Petition for Rehearing.

Appellant maintains that “[t]he Petitioners’ arguments are misplaced when they assert that the Opinion completely overlooked, failed to confront, failed to address, and failed to balance any of the policy considerations related to the lawyer’s duty of loyalty to the client, potential for unlimited liability, and the protection of attorney-client privilege.” Return at 1. However, while this Court’s opinion in Fabian v. Lindsay, Op. No. 27460 (S.C. Sup. Ct. filed Oct. 29, 2014) (Shearouse Adv. Sh. No. 43 at 30), does review

several policy considerations *against* preserving the privity rule—and survey the various alternatives adopted by other jurisdictions which have relaxed or abandoned the rule—it does not address any of the policy considerations *in favor of* preserving the rule. Accordingly, Respondents stand by the assertion in their supporting memorandum that “the Court’s opinion is written as if the privity rule is utterly unjustifiable and there are no legitimate arguments to the contrary” and renew their request that the Court grant rehearing in order to fully evaluate all of the relevant policy considerations.

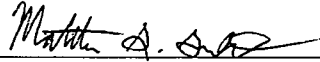
Appellants next accuse Respondents of unjustified hysteria, claiming that by pointing out two unintended consequences of the privity rule’s relaxation—the termination of free or reduced cost estate planning services in South Carolina and an increase in litigation against attorneys—Respondents are comparable to the fabled “Chicken Little.” While amusing, the analogy is inapt. Chicken Little mistakenly thought the sky was falling after he was struck on the head by an acorn. However, the concerns raised by Respondents are unmistakable. Free or reduced cost estate planning services—specifically the Nelson Mullins Wills for Heroes program—*are* being canceled as a direct result of the Fabian decision, and at least two prominent plaintiffs’ attorneys *have* predicted that the decision “will have long and broad implications far beyond trusts and estates.”¹ Respondents are no more engaged in false prophecy than was the Supreme Court of the United States when it wrote the following:

Unless we confine the operation of such contracts as this to the parties who entered into them . . . the most absurd consequences, to which no limit can be seen, will ensue; . . . if we hold that the plaintiff can sue in such a case, there is no point at which such actions will stop. The only safe rule is to confine the right to recover to those who enter into the contract[.]

Nat’l Sav. Bank of D.C. v. Ward, 100 U.S. 195, 203 (1879).

¹ <http://legalmalpracticeforum.com/?p=169> (last visited Nov. 10, 2014).

For the reasons stated herein and in their Memorandum in Support of Petition for Rehearing, Respondents respectfully request that the Court grant rehearing of this matter.



Curtis W. Dowling, S.C. Bar No. 6493
Matthew G. Gerrald, S.C. Bar No. 76236
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Respondents

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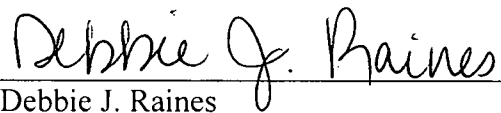
I, the undersigned employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on November 25, 2014, served a copy of the enclosed **REPLY IN SUPPORT OF RESPONDENTS' PETITION FOR REHEARING** upon all other parties, through their attorney(s) of record, by depositing copies of the documents in the United States Mail, first class, sufficient postage prepaid, with the return address(es) clearly noted, addressed as follows:

Thomas A. Pendarvis, Esquire
Catherine B. Kerney, Esquire
Pendarvis Law Offices, P.C.
500 Carteret Street, Suite A
Beaufort, SC 29902-5066

J. Matthew Dillon, Esquire
Dillon Law Firm
805 Creekside Drive
Mount Pleasant, SC 29464

David A. Merline, Jr., Esquire
Merline & Meacham, P.A.
812 East North Street (29601)
Post Office Box 10796
Greenville, SC 29603

George B. Cauthen, Esquire
Michael J. Anzelmo, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070



Debbie J. Raines
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111