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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001267
Circuit Case No. 2009-CP-10-3010

In the matter of the Estate of Alice Shaw Baker.

Betty Fisher and Lisa Fisher, ...Appellants

v.

Bessie Huckabee, Kay Passailague Slade,
Sandra Byrd, and Henry McMaster, in his Capacity as Attorney General of South Carolina, Defendants,

Of whom Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd, ...are the Respondents.

RECORD ON APPEAL

JOHN HUGHES COOPER, ESQUIRE
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Mount Pleasant, SC 29464
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335

(Attorney for Appellant)

PETER A. KOUTEN, ESQUIRE
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457

(Attorney Pro Se and Attorney for Bessie
Huckabee, Kay Passailague Slade,
Sandra Byrd)

W. WESTBROOK WILLS III, ESQUIRE
38 Broad Street Ste. 200
Charleston, SC 29401

(Attorney for Bessie Huckabee, Kay
Passailague Slade, Sandra Byrd)

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BETTY FISHER and LISA FISHER,)

Plaintiff,)

v.)

BESSIE HUCKABEE, et al.,)

Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate)
No.: 2009-ES-10-0378)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NOS. 09-CP-10-3010 and
12 CP 10-1332

**CONSENT ORDER
FOR SUBSTITUTION OF
COUNSEL**

2013 OCT 14 PM 1:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY 1

FILED

THIS MATTER is before this Court upon the joint motion of Peter Kouten of the Kouten Law Firm, LL and W. Westbrook Wills III, as evidenced by their signatures below, who request that the Court substitute Mr. Wills as counsel of record for the Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue in the above styled case and relieving Peter Kouten as counsel for same Defendants. Based on the foregoing, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that W. Westbrook Wills III is hereby SUBSTITUTED as counsel of record for Defendants in place of Peter Kouten. Peter Kouten is hereby relieved as counsel of record in the above-captioned matter, and W. Westbrook Wills III, of the Law Office of W. Westbrook Wills



III, 38 Broad Street, Suite 200, Charleston, SC 29401 shall be sole counsel of record for Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue.

AND SO IT IS ORDERED.

October 10, 2013
St. George, South Carolina



WE SO MOVE:



Peter Kouten
The Kouten Law Firm LLC
P.O. Box 340a
Johns Island, SC 29457
pkouten@gmail.com

WE CONSENT:



W. Westbrook Wills III
38 Broad Street, Suite 200
Charleston, SC 29401
Tel: 843.805.6300
wwills@wwillslaw.com

CHARLESTON, SC
October 8th, 2013

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Kathryn E. Naugle,

Plaintiff,

v.

Denis R. Espinoza and Plaintiff
Finance Solutions,

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action Number: 12-CP-18-2004

CERTIFICATE OF SERVICE

FILED
OCT 14 1:03
JULIE J. ARTHUR
CLERK OF COURT

I certify that on this date a copy of the foregoing *Consent Order of Substitution of Counsel* was served on each party or counsel of record by e-mailing a copy of same, and via United States Mail with sufficient postage to the following address:

Hon. Mary Frances Jowers
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Lisa Fisher, Esq.
c/o/ John Hughes Cooper
(at the above address)

John Hughes Cooper, Esq.
1476 Ben Sawyer Blvd. Ste. 7
Mount Pleasant, SC 29464

Cain Denny, Esq.
Cain Denny, P.A.
PO Box 6
Sullivan's Island SC 29482


W. Westbrook Wills III

Dated: October 8th, 2013
CHARLESTON, SC

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-10-3010

Alice Shaw Baker, et al.
PLAINTIFF(S)

Bessie Huckabee, et al.
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Disqualify, filed on August 1, 2012, heard by this Court on November 28, 2012, is **DENIED**.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

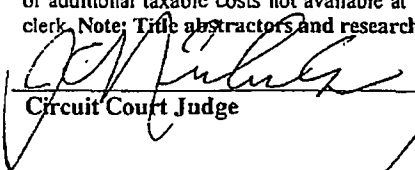
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

1/30/14
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-3010

BETTY FISHER
PLAINTIFF(S)

BESSIE HUCKABEE
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Upon review of the motion and relevant case law, the Court denies without rehearing the "Motion by Plaintiffs Betty Fisher and Lisa Fisher to Reconsider, Alter, Amend, and Vacate February 10, 2014 Order Denying Motion to Disqualify and Remove Opposing Counsel Peter Kouten Due to Non-Waivable Conflict of Interest; Memoranda of Law; Affidavit of Lisa Fisher," filed on February 18, 2014.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

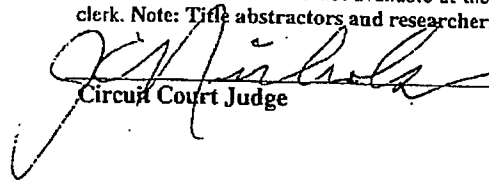
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

5/5/14
Date

The South Carolina Court of Appeals

Betty Fisher and Lisa Fisher

Appellants

v

Bessie Huckabee, et al.,

Respondents

In the Matter of the Estate of Alice
Shaw-Baker

Charleston County Probate No.: 2009-ES-10-0378/F

The Honorable Thomas L. Hughston, Jr.
Charleston County
Trial Court Case No. 2009-CP-10-03010

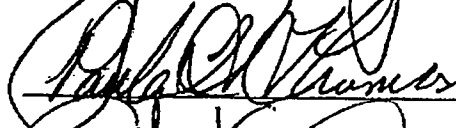
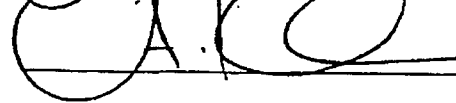
ORDER

Appellants have filed a motion in this court to remove Respondents' counsel from all representation in this matter because of an alleged conflict of interest. At the request of the court, Respondents have provided a return to the motion, to which Appellants, of their own volition, have filed a reply.

The court has concluded that granting the motion at this time will not further the interests of justice. This determination is based on (1) the narrow scope of issues on appeal to this court and (2) Appellants' failure to pursue the requested relief at an earlier stage in the litigation even though the information prompting their allegation of a conflict of interest has been a matter of public record throughout the proceedings in the present action.

It is therefore ordered that the motion to remove Respondents' counsel is denied. This decision, however, is limited to the proceedings pending in this court and is without prejudice to Appellants to raise their concerns and move for relief under appropriate circumstances in either the probate court or the circuit court.

AND IT IS SO ORDERED.


C.J.

J.

J.

Columbia, South Carolina

cc: Cain Denney, Esquire
John Cooper, Esquire
Peter A. Kouten, Esquire

FILED

MAR 04 2011

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2009-ES-10-0378
	)	(On motion for Removal
	)	to the Circuit Court)
Betty Fisher, and	)	ADDENDUM TO PETITION FOR
Lisa Fisher,	)	FORMAL TESTACY AND APPOINTMENT
as Conservator for	)	
Alice Shaw-Baker,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>VERIFIED COMPLAINT</u>
	)	
Bessie Huckabee,	)	(JURY TRIAL DEMANDED)
Kay Passailaigue Slade,	)	
Sandra Byrd,	)	
Henry McMaster,	)	
in his capacity as	)	
Attorney General	)	
of South Carolina,	)	
State Budget and	)	
Control Board, South	)	
Carolina Retirement	)	
System, ING, South	)	
Carolina Deferred	)	
Compensation Program,	)	
and National Life	)	
Insurance Company,	)	
	)	
Defendants.	)	(Jury Trial Demanded)
	)	
IN THE MATTER OF:	)	
ALICE SHAW-BAKER	)	
	)	

09/27/2012

COME NOW Betty Fisher and Lisa Fisher, as Conservator for Alice Shaw-Baker, Plaintiffs in the above-captioned action, and complaining of Defendants, show this honorable Court as follows:

Parties

1. This matter regards Alice Shaw-Baker ("Ms. Shaw-Baker"), who died February 25, 2009, in Charleston County, South

Carolina. At her death, Ms. Shaw-Baker was a citizen of South Carolina and a resident of Charleston County.

2. Plaintiff Betty Fisher is Ms. Shaw-Baker's niece, her next-of-kin, an heir at law, and is petitioning for appointment as Personal Representative of Ms. Shaw-Baker's estate. Betty Fisher is a California resident.
3. Plaintiff Lisa Fisher is Ms. Shaw-Baker's great-niece and was appointed by the Probate Court on November 19, 2008 as Ms. Shaw-Baker's Conservator and Guardian. Lisa Fisher is not an heir at law of Ms. Shaw-Baker. Lisa Fisher is Plaintiff in this action in her current capacity as Conservator of the Estate of Alice Shaw-Baker, requesting declaratory relief as to proper disposition of Estate assets. Lisa Fisher is a California resident.
4. Bessie Huckabee ("Huckabee") is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will and, pursuant to it, on or about March 10, 2009, was appointed Personal Representative of Ms. Shaw-Baker's Estate in informal probate without bond. On information and belief, she is a resident of Charleston County, South Carolina.
5. Kay Passailaigue Slade ("Slade") is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will, and is the contested sole beneficiary of Ms. Shaw-Baker's South Carolina Retirement System pension plan, the contested sole

beneficiary of Ms. Shaw-Baker's South Carolina Deferred Compensation plan, and the contested sole beneficiary of Ms. Shaw-Baker's National Life Insurance Company life insurance policy. On information and belief, Slade is a resident of Charleston County, South Carolina.

6. Sandra Byrd is a devisee under Ms. Shaw-Baker's contested May 21, 2001 will. On information and belief, she is a resident of Berkeley County, South Carolina.
7. Henry McMaster, in his capacity as the Attorney General of South Carolina, is the appropriate representative to protect the interests of a charitable organization, the John Ancrum Society for the Prevention of Cruelty to Animals, a devisee under Ms. Shaw-Baker's April 5, 1996 will.
8. On information and belief at all time material the State Budget and Control Board and the South Carolina Retirement System administer one or more retirement plans to which Ms. Shaw-Baker contributed in the name "Alice E Shaw Baker" and from which pension benefits are now payable to the estate of Ms. Shaw Baker. Although said benefits are also claimed by contested sole beneficiary Kay Passailaigue Slade, the said pension benefits are properly a probate asset.
9. On information and belief at all times material ING and the South Carolina Deferred Compensation Program administer one

or more 457 Plans to which Ms. Shaw-Baker contributed in the name "Alice E. Shaw-Baker" and from which deferred compensation benefits are now payable to the estate of Ms. Shaw-Baker. Although said benefits are also claimed by contested sole beneficiary Kay Passailaigue Slade, the said deferred compensation benefits are properly a probate asset.

10. The National Life Insurance Company is the issuer of Ms. Shaw-Baker's life insurance policy, number 1424341, with contested sole beneficiary Kay Passailaigue Slade. The proceeds of said policy are properly a probate asset.

Jurisdiction and Venue

11. This Court has jurisdiction and venue to hear and determine this matter which relates to the Estate of a decedent who died a resident of Charleston County, South Carolina, who left property in Charleston County, South Carolina, and whose Estate is being administered under the jurisdiction of the Probate Court for Charleston County, South Carolina. Plaintiffs file herewith a Motion for Removal of this matter to the Circuit Court.

Background

12. Ms. Shaw-Baker was born August 14, 1929 in San Francisco, California.

13. Ms. Shaw-Baker's most closely related family member is her niece, Plaintiff Betty Fisher, a resident of Long Beach, California.
14. Twice, Ms. Shaw-Baker married briefly then divorced.
15. Ms. Shaw-Baker had no children.
16. Ms. Shaw-Baker was enlisted in the United States Navy for four years and, during her enlistment, stationed in Charleston, South Carolina.
17. After her Navy enlistment, Ms. Shaw-Baker did accounting-related work in Charleston, SC, for various employers.
18. Ms. Shaw-Baker did accounting-related work for Charleston Memorial Hospital for approximately twenty years until her retirement.
19. While working at Charleston Memorial Hospital, Ms. Shaw-Baker contributed to a pension plan as set forth above ("pension").
20. While working at Charleston Memorial Hospital, Ms. Shaw-Baker contributed to a 457 deferred compensation plan as set forth above ("deferred compensation").
21. Ms. Shaw-Baker obtained a life insurance policy through National Life, policy number 1424341 ("life insurance").
22. Ms. Shaw-Baker owned at least three Chihuahuas, which were show dogs. She cared for, trained, and loved them for many

- years prior to their deaths within the last few years of her life.
23. Ms. Shaw-Baker's home was decorated with collectibles, figurines, stuffed animals, clocks, furnishings, and art of extraordinary variety, all featuring Chihuahua themes.
 24. Ms. Shaw-Baker was involved with animal rescue projects, animal welfare, and other activities for the protection of animals.
 25. During her years working at Charleston Memorial Hospital, Ms. Shaw-Baker began to place considerable trust and confidence in two co-workers, Bessie Huckabee ("Huckabee") and Kay Passailaigue Slade ("Slade").
 26. Slade was involved with various animal protection and rescue charities.
 27. Huckabee and Slade developed relationships with Ms. Shaw-Baker in which she placed trust and confidence in them.
 28. On January 7, 1993, Ms. Shaw-Baker executed a will leaving the majority of her estate to Pet Helpers, Inc., or, if it no longer existed, the John Ancrum Chapter of the Society for Prevention of Cruelty to Animals ("1993 Will").
 29. Ms. Shaw-Baker's 1993 Will made certain bequests of her personal property and left \$8,000 to Huckabee, \$12,000 to Slade conditioned on Slade's caring for Ms. Shaw-Baker's dogs, \$1 devises to her ex-husband and each of her

siblings, and the remainder of her estate to Pet Helpers, Inc., or, if it no longer existed, to the John Ancrum Chapter of the Society for Prevention of Cruelty to Animals ("John Ancrum SPCA").

30. On April 5, 1996, Ms. Shaw-Baker executed another will leaving the majority of her estate to the John Ancrum SPCA ("1996 Will").
31. Ms. Shaw-Baker's 1996 Will made certain bequests of personal property and left \$12,000 to Slade for the care of Ms. Shaw-Baker's pets, but, if Ms. Shaw-Baker no longer had pets, then \$12,000 to Slade regardless, \$8,000 to Huckabee, a life estate in her residence to Slade and her husband, and the remainder interest in her residence and the remainder of her estate to the John Ancrum SPCA.
32. Ms. Shaw-Baker originally made the John Ancrum SPCA the beneficiary of her deferred compensation and pension plans.
33. Ms. Shaw-Baker originally made the John Ancrum SPCA the beneficiary of her life insurance.
34. Ms. Shaw-Baker was concerned about what would happen to her as she aged and in the event that she was unable to take care of herself.
35. On April 5, 1996, the same day she executed her 1996 will, Ms. Shaw-Baker executed a General Durable Power of Attorney making Huckabee her attorney-in-fact.

36. Ms. Shaw-Baker's 1996 Durable Power of Attorney expressly created a fiduciary relationship between herself and Huckabee and prohibited Huckabee from using its powers to benefit herself.
37. Also on April 5, 1996, Ms. Shaw-Baker executed a Health Care Power of Attorney making Huckabee her health care attorney-in-fact with Slade as the alternate.
38. Among other provisions, the Health Care Power of Attorney authorized hiring and firing of medical, social service, and other support personnel for Ms. Shaw-Baker's care.
39. Huckabee and Slade, having developed relationships with Ms. Shaw-Baker in which Ms. Shaw-Baker placed trust and confidence in them, exerted undue influence on her to change her will, and her deferred compensation, pension, and life insurance beneficiary designations to remove the animal charities and make Huckabee and Slade the primary beneficiaries.
40. To induce Ms. Shaw-Baker to change her will and her deferred compensation, pension, and life insurance beneficiary designations, Huckabee and Slade represented to Ms. Shaw-Baker that, as Ms. Shaw-Baker aged, if she became unable to provide care for herself, they would provide care for her and help Ms. Shaw-Baker stay in her home and avoid placement in an assisted living facility.

41. However, at the time Huckabee and Slade made said representations, they had no intention of performing them.
42. As further inducement, Slade further represented to Ms. Shaw-Baker that, if Ms. Shaw-Baker willed money to her and left money to her from her deferred compensation, pension, and life insurance, Slade would ensure that her monies went directly to animal welfare and rescue projects only.
43. However, at the time Slade made said representation, she had no intention of performing them.
44. In reliance on the aforesaid false representations of Huckabee and Slade, and under the undue influence of them, Ms. Shaw-Baker executed a will on May 21, 2001 making Huckabee and Slade, other than a \$4,000 devise to Sandra Byrd, her sole beneficiaries.
45. Huckabee and Slade substituted their own wishes for Ms. Shaw-Baker's in her May 21, 2001 will.
46. In further reliance on the aforesaid false representations, and under the undue influence of Huckabee and Slade, Ms. Shaw-Baker purportedly made Slade the sole beneficiary of her deferred compensation and pension plans.
47. In further reliance on the aforesaid false representations and under the undue influence of Huckabee and Slade, Ms. Shaw-Baker purportedly made Slade the sole beneficiary of her life insurance.

48. By late 2007, Ms. Shaw-Baker's residence had become cluttered, she was hoarding junk mail and small items associated with Chihuahua dogs, and she likely was not maintaining adequate hygiene or nutrition.
49. Despite their representations on which Ms. Shaw-Baker relied in executing her contested May 21, 2001 Will, and in changing her beneficiary designations for her deferred compensation, pension, and life insurance, Huckabee and Slade did not provide care for Ms. Shaw-Baker to ensure that she had a livable home, adequate food, or proper hygiene.
50. On information and belief, in 2007, Ms. Shaw-Baker requested beneficiary designation forms for her deferred compensation and pension in an attempt to remove Slade as her beneficiary.
51. On July 31, 2008, a representative of the Charleston Police Department's Elder Support Line, Elisabeth Spencer, filed a Petition for a Finding of Incapacity and for Appointment of a Guardian and Conservator for Ms. Shaw-Baker.
52. On August 4, 2008, the Probate Court appointed as Temporary Guardian Walter R. Kaufman, Esquire.
53. On August 18, 2008, the Probate Court appointed Walter R. Kaufman, Esquire, and Jane Orenstein as Temporary Co-Guardians.

54. Temporary Co-Guardian Orenstein stated her intention to remove Ms. Shaw-Baker from her home and place her in an assisted living facility.
55. Despite the representations Huckabee and Slade made to induce Ms. Shaw-Baker to execute her contested May 21, 2001 Will and to change the beneficiary designations for her deferred compensation, pension, and life insurance, they refused to provide assistance to ensure that that Ms. Shaw-Baker received adequate care when she became incapacitated and they refused to assist her with staying in her home and with avoiding placement in an assisted-living facility.
56. Ms. Shaw-Baker's niece, Plaintiff Betty Fisher, and her great-niece, Plaintiff Lisa Fisher, traveled to Charleston, South Carolina, from California on several occasions to assist Ms. Shaw-Baker.
57. Ms. Shaw-Baker's family members requested that Huckabee and Slade assist Ms. Shaw-Baker, but they refused.
58. On information and belief, during this period, Huckabee and Slade refused to visit Ms. Shaw-Baker.
59. Both Huckabee and Slade had failed to disclose Ms. Shaw-Baker's condition to her family or authorities prior to the intervention of the Charleston Police Department's Elder Support office.

60. On September 8, 2008, Plaintiff Lisa Fisher filed a Motion for Injunctive Relief to prevent Ms. Shaw-Baker from being removed from her home.
61. On September 16, 2008, Lisa Fisher was appointed Ms. Shaw-Baker's Temporary Co-Guardian.
62. While Temporary Co-Guardian, Lisa Fisher, with the assistance of Temporary Co-Guardian Orenstein, fulfilled the Probate Court's directives to have Ms. Shaw-Baker's house cleaned, organized, and renovated and to make arrangements for caretakers to supervise Ms. Shaw-Baker's daily meals, hygiene, and medical needs.
63. On information and belief, despite their aforesaid representations, Huckabee and Slade promoted Ms. Shaw-Baker's placement in an assisted living facility and took no efforts to help her stay in her home.
64. On October 29, 2008, Lisa Fisher was appointed Ms. Shaw-Baker's Guardian and Conservator.
65. Among other determinations, in its November 19, 2008 Order, the Probate Court found that Ms. Shaw-Baker had capacity to nominate Lisa Fisher as her Guardian and Conservator, to consent to conservatorship, to make purchases up to \$50, and to vote.
66. Among other provisions, in its November 19, 2008 Order, the Probate Court ordered that a Court Order would be required

for Ms. Shaw-Baker or someone on her behalf to revoke her will.

67. On information and belief, Ms. Shaw-Baker executed a will subsequent to the May 21, 2001 will revoking the May 21, 2001 will ("Subsequent Will").

68. The location of the Subsequent Will was and is not known to Plaintiffs.

69. Ms. Shaw-Baker instructed Lisa Fisher, as her Guardian and Conservator, to revoke Ms. Shaw-Baker's May 21, 2001 Will.

70. Ms. Shaw-Baker became hospitalized while suffering from cancer and related medical problems.

71. On February 25, 2009, Ms. Shaw-Baker died.

72. Within minutes of Ms. Shaw-Baker's death, Huckabee sent her representatives to Ms. Shaw-Baker's house and obtained the keys to Ms. Shaw-Baker's house by falsely representing to the caretaker that Huckabee was entitled to the keys. This occurred before arrangements had been made for the proper care of Ms. Shaw-Baker's remains.

73. On information and belief, shortly after Ms. Shaw-Baker's death, Huckabee entered Ms. Shaw-Baker's house.

74. On information and belief, Huckabee sought to locate the Subsequent Will.

75. Huckabee and Slade had a motive and an opportunity to remove or destroy the Subsequent Will.

76. After Ms. Shaw-Baker's death, on information and belief, a partially-preserved digital draft of will was found on a computer at the same law firm that drafted Ms. Shaw-Baker's contested May 21, 2001 will. Based on information from a law firm employee, it was saved in 2001, and it named beneficiaries other than Huckabee and Slade, including family members such as Plaintiff Betty Fisher.

FOR A FIRST CAUSE OF ACTION

(Constructive Trust)

77. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
78. Plaintiff Lisa Fisher is the Court-appointed Conservator for Ms. Shaw-Baker to whom the assets of Ms. Shaw-Baker's estate are currently entrusted.
79. Plaintiffs challenge Ms. Shaw-Baker's May 21, 2001 Will.
80. Plaintiff Betty Fisher petitions herein for appointment as the Personal Representative of Ms. Shaw-Baker's estate.
81. Plaintiffs seek a Constructive Trust over the assets of Ms. Shaw-Baker's estate and the proceeds of her deferred compensation, pension, and life insurance pending a determination of the validity of her various wills and pending resolution of Betty Fisher's Petition to be appointed as Personal Representative.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment Regarding Revocation)

82. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
83. Ms. Shaw-Baker instructed her Conservator and Guardian, Lisa Fisher, to revoke Ms. Shaw-Baker's May 21, 2001 Will.
84. Plaintiffs seek a Declaratory Judgment that Ms. Shaw-Baker's said instruction revoked her May 21, 2001 Will.
85. Because Ms. Shaw-Baker's May 21, 2001 Will had revoked her April 5, 1996 Will, and it, in turn, had revoked her January 7, 1993 Will, Ms. Shaw-Baker died intestate.
86. Plaintiffs seek a declaratory judgment that Ms. Shaw-Baker revoked her May 21, 2001 Will and died intestate.

FOR A THIRD CAUSE OF ACTION

(Undue Influence)

87. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
88. At all material times, Huckabee and Slade had formed fiduciary relationships with Ms. Shaw-Baker in which she placed trust and confidence in them, and they had fiduciary duties to her.
89. At all material times, Huckabee had an express fiduciary relationship to Ms. Shaw-Baker per Ms. Shaw-Baker's April 5, 1996 General Durable Power of Attorney.

90. At all material times, Slade had a confidential relationship with Ms. Shaw-Baker.
91. Huckabee and Slade coerced Ms. Shaw-Baker by undue influence to execute her May 21, 2001 Will, substituting their wishes for hers.
92. Due to Huckabee and Slade's said coercion and undue influence, Ms. Shaw-Baker's May 21, 2001 Will was void *ab initio*.
93. Plaintiff Lisa Fisher, Ms. Shaw-Baker's Conservator, to whom the assets of Ms. Shaw-Baker's estate are currently entrusted, seeks a Declaratory Judgment regarding the validity of the May 21, 2001 Will.
94. Plaintiffs further seek to set aside the latest beneficiary designations of Ms. Shaw-Baker's deferred compensation, pension, and life insurance based on Undue Influence.
95. Plaintiffs seek a declaration that the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

96. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
97. Huckabee and Slade induced Ms. Shaw-Baker to execute the May 21, 2001 will making them, except for a \$4,000.00 devise to Sandra Byrd, the sole beneficiaries.

98. At all material times, Huckabee and Slade had fiduciary relationships with Ms. Shaw-Baker arising from the trust and confidence she had placed in them.
99. At all material times, Huckabee had an express fiduciary relationship with Ms. Shaw-Baker per Ms. Shaw-Baker's April 5, 1996 General Durable Power of Attorney.
100. Huckabee and Slade represented to Ms. Shaw-Baker that if she changed her will to make them the primary beneficiaries and if she changed the beneficiary designations for her deferred compensation, pension, and life insurance to make Slade the sole beneficiary, they would take care of her if she became unable to take care for herself and that they would assist her with staying in her home and avoiding placement in an assisted living facility.
101. At the time Huckabee and Slade made said representations, they had no intention of performing them.
102. Slade further represented to Ms. Shaw-Baker that if Ms. Shaw-Baker changed her will and the beneficiary designations for her deferred compensation, pension, and life insurance, then Slade would insure that the money left to her under Ms. Shaw-Baker's will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

103. At the time Slade made said representations, she had no intention of performing them.
104. Huckabee and Slade's said representations were false.
105. Huckabee and Slade's said representations were material to Ms. Shaw-Baker's execution of her May 21, 2001 Will and to her making Slade sole beneficiary of her deferred compensation, pension, and life insurance.
106. Huckabee and Slade knew that their said representations were false and disregarded that falsity.
107. Huckabee and Slade intended that Ms. Shaw-Baker act upon their said false representations by changing her will to make them the primary beneficiaries and by changing her deferred compensation, pension, and life insurance to make Slade the sole beneficiary.
108. Ms. Shaw-Baker was ignorant as to the falsity of Huckabee and Slade's said representations.
109. Ms. Shaw-Baker reasonably relied on Huckabee and Slade's said representations in changing her will to make them the primary beneficiaries and in changing her deferred compensation, pension, and life insurance to make Slade sole beneficiary.
110. As a direct and proximate result of Huckabee and Slade's said fraud, Ms. Shaw-Baker was injured by suffering lack of assistance from Huckabee and Slade as she became unable to

care for herself and she suffered the circumvention of her intent to benefit animal charities with her estate.

111. While Ms. Shaw-Baker suffered, Huckabee and Slade intentionally concealed Ms. Shaw-Baker's condition to avoid exposure of their fraud, neglect, and undue influence.

112. Due to Huckabee and Slade's said fraud, Ms. Shaw-Baker's May 21, 2001 Will and her beneficiary designations of Slade for her deferred compensation, pension, and life insurance were void *ab initio*.

113. Plaintiffs seek a declaration that the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets.

FOR A FIFTH CAUSE OF ACTION

(Declaratory Judgment Regarding Improper Execution)

114. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.

115. Ms. Shaw-Baker's May 21, 2001 will was improperly executed.

116. There is no evidence that the persons who signed as witnesses to her May 21, 2001 Will observed Ms. Shaw-Baker execute it or observed her acknowledge her signature.

117. Plaintiffs seek a Declaratory Judgment that Ms. Shaw-Baker's May 21, 2001 will was invalid.

FOR A SIXTH CAUSE OF ACTION

(Declaratory Judgment Regarding Subsequent Will)

118. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
119. Ms. Shaw-Baker revoked her May 21, 2001 will with the Subsequent Will.
120. Plaintiffs seek a declaratory judgment that Ms. Shaw-Baker's Subsequent Will revoked her May 21, 2001 will.

FOR A SEVENTH CAUSE OF ACTION

(Unjust Enrichment)

121. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
122. Huckabee and Slade induced Ms. Shaw-Baker to change her will to make them the primary beneficiaries and to change her beneficiary designations to make Slade the sole beneficiary of her deferred compensation, pension, and life insurance based on their representations that they would care for her if she became unable to care for herself and in reliance on Slade's representation that she would ensure that the money left to her under the Will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.
123. At the time Huckabee and Slade made said representations, they had no intention of performing them.

124. Ms. Shaw-Baker conferred the benefit on Huckabee and Slade of making them her primary beneficiary under her contested May 21, 2001 Will, and she made Slade the sole beneficiary under the contested beneficiary designations of her deferred compensation, pension, and life insurance.
125. Huckabee and Slade stand to be unjustly enriched by distribution to them under the contested May 21, 2001 will, and Slade stands to be unjustly enriched by distribution under contested deferred compensation, pension, and life insurance beneficiary designations.
126. It would be inequitable to allow Huckabee and Slade to obtain disbursements from Ms. Shaw-Baker's Estate and to allow Slade to obtain disbursements from Ms. Shaw-Baker's deferred compensation, pension, and life insurance not having performed the representations for which Ms. Shaw-Baker made them beneficiaries.
127. Plaintiffs seek equitable relief restoring any devises to Huckabee or Slade to Ms. Shaw-Baker's Estate.

FOR AN EIGHTH CAUSE OF ACTION

(Promissory Estoppel)

128. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
129. Slade made an unambiguous representation to Ms. Shaw-Baker that she would ensure that the money left to her under the

Will, deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

130. Ms. Shaw-Baker reasonably relied on Slade's said representations in executing her contested May 21, 2001 will and in making the contested beneficiary designations with Slade as sole beneficiary of her deferred compensation, pension, and life insurance.

131. Ms. Shaw-Baker's reliance on Slade's said representations was foreseeable and intended by Slade.

132. On information and belief, Slade does not intend to perform said representations and Ms. Shaw-Baker's estate has been harmed by Ms. Slade's circumvention of her wishes that her estate and the proceeds of her deferred compensation, pension, and life insurance would go directly to animal welfare and rescue projects only.

133. As alternative relief, specific performance should be awarded and Slade enjoined to use the money left to her under Ms. Shaw-Baker's May 21, 2001 will, and the proceeds left to her from Ms. Shaw-Baker's deferred compensation, pension, and life insurance directly for animal welfare and rescue projects only.

FOR A NINTH CAUSE OF ACTION

(Petition for Removal of Huckabee as Personal Representative)

134. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.

135. Huckabee and Slade undertook to care for Ms. Shaw-Baker when she became unable to care for herself by representing to Ms. Shaw-Baker that they would provide or arrange for such care, but, at the time of said representations, they had no intention of fulfilling them.

136. When Ms. Shaw-Baker became unable to care for herself, Huckabee and Slade failed to ensure that she had adequate daily care, nutrition, hygiene, a suitable living environment, or health care.

137. Ms. Shaw-Baker relied on Huckabee and Slade for care in the event she became unable to care for herself, and, based on their representations, did not make alternative arrangements.

138. Ms. Shaw-Baker's estate has a survival action against Huckabee and Slade for neglect of Ms. Shaw-Baker as a vulnerable adult.

139. Ms. Shaw-Baker's estate has a survival action against Huckabee for breach of her express fiduciary duties as attorney-in-fact for Ms. Shaw-Baker to hire medical, social service, and other support personnel for Ms. Shaw-Baker's care during the time Ms. Shaw-Baker was mentally incompetent.

140. Ms. Huckabee cannot equitably both serve as Personal Representative of Ms. Shaw-Baker's estate and adequately prosecute the Estate's survival action against herself.
141. Plaintiffs seek removal of Huckabee as Personal Representative of Ms. Shaw-Baker's Estate.

FOR A TENTH CAUSE OF ACTION
(Petition for Appointment of Betty Fisher as
Personal Representative)

142. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
143. Plaintiff Betty Fisher is Ms. Shaw-Baker's next-of-kin.
144. Betty Fisher seeks appointment as the Personal Representative of Ms. Shaw-Baker's estate.

FOR AN ELEVENTH CAUSE OF ACTION
(Attorneys' Fees and Costs)

145. Plaintiffs reassert the foregoing allegations as if set forth herein verbatim.
146. Plaintiffs brought this action on behalf of Ms. Shaw-Baker's estate and all costs of this action, including reasonable attorneys' fees, are properly paid therefrom, and should be approved.

Prayer for Relief

WHEREFORE, Plaintiffs pray that the Court inquire into this matter and issue the following:

1. a Constructive Trust over the assets of Ms. Shaw-Baker's estate and the proceeds of her deferred compensation, her pension, and her life insurance pending determination of the validity of Ms. Shaw-Baker's various wills and pending resolution of Betty Fisher's Petition for Appointment as Personal Representative;
2. a Declaratory Judgment that Ms. Shaw-Baker revoked her May 21, 2001 Will and died intestate;
3. Alternatively or additionally, an Order setting aside Ms. Shaw-Baker's May 21, 2001 will and her designations of Slade as beneficiary of her deferred compensation, pension, and life insurance based on Undue Influence and Fraud;
4. an order declaring the proceeds of Ms. Shaw-Baker's deferred compensation, pension, and life insurance are properly probate assets;
5. a Declaratory Judgment that Ms. Shaw-Baker's May 21, 2001 will was invalid for improper execution;
6. In the alternative or additionally, a Constructive Trust over any devises to Huckabee and Slade for the benefit of Ms. Shaw-Baker's Estate;
7. In the alternative or additionally, Specific Performance requiring Slade to use the money left to her under Ms. Shaw-Baker's May 21, 2001 will, her deferred compensation, her pension, and her life insurance for animal charities;

8. Removal of Huckabee as Personal Representative of Ms. Shaw-Baker's Estate;
9. Appointment of Betty Fisher as Personal Representative of Ms. Shaw-Baker's Estate;
10. An Order awarding costs of this action, including reasonable attorneys fees to Plaintiffs, who brought this action for the benefit of Ms. Shaw-Baker's Estate;
11. Such other or further relief as justice may require.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:

JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
1808 Middle Street
Post Office Box 395
Sullivan's Island, SC 29482
shiplaw@jhcooper.com
843-883-9099; fax 843-883-9335

and

CAIN DENNY, ESQUIRE
Federal ID 7383
South Carolina Bar 13590
CAIN DENNY, P.A.
P.O. Box 1205
Charleston, S.C. 29402
cain@intercoastproperties.com
843-965-5400; fax 843-883-9335

ATTORNEYS FOR PLAINTIFFS,
BETTY FISHER AND
LISA FISHER, AS CONSERVATOR FOR
ALICE SHAW-BAKER

Sullivan's Island, South Carolina
April 21, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF: CHARELSTON)

IN THE PROBATE COURT

BETTY FISHER, AND LISA FISHER, AS
CONSERVATOR FOR ALICE SHAW-BAKER,
PLAINTIFFS,

V.

BESSIE HUCKABEE, KAY PASSAILAIGUE
SLADE, SANDRA BYRD, HENRY MCMASTER,
IN HIS CAPACITY AS ATTORNEY GENERAL OF
SOUTH CAROLINA, STATE BUDGET AND
CONTROL BOARD, SOUTH CAROLINA
RETIREMENT SYSTEM, ING, SOUTH
CAROLINA DEFERRED COMPENSATION
PROGRAM, AND NATIONAL LIFE INSURANCE
COMPANY, DEFENDANTS.

IN THE MATTER OF: Alice Shaw-Baker)

CASE NUMBER: 2009-ES-10-0378
(On Motion for Removal to the Circuit Court)

APPLICATION FOR

INFORMAL

(check any that apply)

☐ PROBATE OF WILL
☐ APPOINTMENT

PETITION FOR

FORMAL

☒ TESTACY
☒ APPOINTMENT

Applicant/Petitioner: Betty Fisher

Address: PO Box 91112 Long Beach, CA 90809-1112

Telephone: 562-688-9109

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Niece of the decedent, intestate heir

2. Decedent Information

Name: Alice Shaw-Baker

Social Security Number: 562-32-9423

Date of Birth: 08-14-29

Date of Death: 02-25-09

Age at date of death: 79

Domicile at date of death: Charleston

SC

(county)

(state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.

☐ Decedent has right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Bessie Huckabee		5319 McRoy Street, N. Charleston, SC 29418	
Sandra Byrd		254 Jean Wells Dr., Goose Creek, SC 29445	
Kay Passallaigue		4446 Paramount Dr., N. Charleston, SC 29405	
(use additional sheet if necessary)			

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Betty Fisher		PO Box 91112, Long Beach, CA 90809-1112	Niece
Brijette Sena		Unknown	Great Niece
Children of Tom Sasso		Unknown	
Children of Lucky Rose Sazio		Unknown	

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☐ NO ☒ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses of such Personal Representative, on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of \$200,000 and real estate of about the value of \$150,000. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached
- ☒ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☐ Yes ☒ NO If no, please explain on page 3.

3. The date of execution of the will was: May 21, 2001

codicil(s): Unknown

4. Are you aware of any instrument or document amending or revoking the will?

- ☐ NO ☒ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☐ YES ☒ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☐ YES ☒ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

4.b. Darlene Georgette Strouse Address Unknown

7. Alice Shaw-Baker's great niece, Lisa Fisher, was appointed as guardian and conservator October 29, 2008 in Case No. 2008-GC-10-088 with Ms. Shaw-Baker's consent.

8. On March 10, 2009, Bessie Huckabee was appointed as Personal Representative in Case No. 2009-ES-10-0378. Her address is 5319 McRoy Street, North Charleston, SC 29418.

Section II

For explanations for Questions 2, 4, 5, and 6, please the Addendum to Petition for Formal Testacy and Appointment.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:
Betty Fisher

2. Priority for this appointment is:
☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☐ named as nominee of Primary and/or Alternate Personal Representative
☐ other devisee of decedent, or nominee (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent, or nominee of said spouse
☒ other heir of decedent (describe): Niece
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above
3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this _____ day of _____, 20 _____

See attached

Notary Public for South Carolina
My Commission Expires: _____

Signature: Betty Fisher
Name: Betty Fisher
Address: PO Box 91112
Long Beach, CA 90809-1112
E-mail: _____
Telephone (O): (562) 688-9109
(H): _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 _____.

_____, Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, _____, be admitted formally to probate.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Betty Fisher
Name: Betty Fisher
Address: PO Box 91112
Long Beach, CA 90809-1112
E-mail: _____
Telephone (O): (562) 688-9109
(H): _____

Signature: _____
Name: _____
Address: _____
E-mail: _____
Telephone (O): _____
(H): _____

Attorney: John Hughes Cooper, Esq.
Address: 1808 Middle Street
PO Box 395; Sullivans Island, SC 29482
E-mail: shiplaw@jhcooper.com
Telephone (O): (843) 883-9099

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2009-CP-10-3010

BETTY FISHER et al

Plaintiffs,

v.

BESSIE HUCKABEE et al

Defendants,

In the Matter of
Alice Shaw-Baker.

) MOTION BY PLAINTIFFS BETTY
) FISHER AND LISA FISHER TO
) DISQUALIFY AND REMOVE
) OPPOSING COUNSEL PETER KOUTEN
) DUE TO NON-WAIVABLE CONFLICT
) OF INTEREST;
) MEMORANDUM OF LAW;
) AFFIDAVIT OF LISA FISHER

2012 AUG -1 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

COME NOW Plaintiffs Betty Fisher and Lisa Fisher and move this court to disqualify and remove Defendants Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd's attorney of record, Peter Kouten ("Attorney Kouten").

The basis of this motion is Attorney Kouten's prior representation of the decedent in this will contest, Alice Shaw Baker ("Ms. Shaw Baker). Said representation is in violation of S.C. Rules of Professional Conduct, including but not limited to: Rule 407, Rules § § 1.7, 1.9, et seq. and the legal authority set forth in Townsend v. Townsend, 323 S.C. 309, 474 S.E. 2d 424 (1996).

I.

INTRODUCTION

The principles guiding disqualification of an attorney are based on the accepted premise that an attorney may not use information or do anything which will injuriously

affect his or her former client.¹ Attorney Peter Kouten violated these venerable principles, and the Rules of Professional Conduct when he began representing Defendants prior to and after his former client's death. This motion is brought to end his continued representation in violation of Ms. Shaw Baker's rights, and contrary to the S.C. Rules of Professional Conduct.

A. Statement of Facts

On February 25, 2009, Alice Shaw Baker ("Ms. Shaw Baker") died.

Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") are the niece and great-niece of Ms. Shaw Baker.

Plaintiffs allege that during Ms. Shaw Baker's life, Defendants Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd ("Defendants") deceived her, and exerted undue influence to obtain her property. Ms. Shaw Baker intended to leave all her estate and monies to animal charities. Defendants knew her intentions, and thereafter colluded to deceive her and pretended ownership in an animal rescue to gain her trust and confidence.

In or about September, 2008, Defendants reported Ms. Shaw Baker to initiate Guardianship proceedings through the Charleston City Police. Thereafter, Elizabeth Spencer of City of Charleston Elder Supportline filed a guardianship/conservatorship petition with the Probate Court.

¹ "Disqualification, where appropriate, ensures that the case is well presented in court, that confidential information of present or former clients is not misused, and that a client's substantial interest ...is protected." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. 1 (2000).

Immediately upon learning of her troubles, Plaintiffs Betty Fisher and Lisa Fisher rushed to her side and sought to assist Ms. Shaw Baker. Despite Ms. Shaw Baker's efforts and desire to live independently, the Probate Court went forward with the petitions and the investigation required under S.C. Code Ann. § 62-5-303.

As part of that investigation, and pursuant to mandatory requirement in the Code, Judge Tamara Curry of the Probate Court appointed Attorney Peter Kouten as visitor, guardian ad litem, and attorney for Alice Shaw Baker. On October 20, 2008, he filed a visitor's report. (Attached hereto is a true and correct copy of said report marked as Exhibit A) He was appointed to represent Ms. Shaw Baker at the trial in opposition to the conservatorship. At the conclusion of the trial, the court ordered him to continue as Ms. Shaw Baker's visitor, visiting her every week until her death.

He submitted numerous bills and reports to the court as Attorney, Visitor, and Guardian ad litem. For example, On December 23, 2008, Attorney Kouten submitted his monthly visitor's report to the Probate Court. (Attached hereto is a true and correct copy of said report marked as Exhibit B) Accompanying that report was a bill for services rendered to Alice Shaw Baker, directed to Lisa Fisher, requesting payment in the amount of \$4,500.84. (Attached hereto is a true and correct copy of said bill marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84)

He also e-mailed Lisa Fisher wherein he informed her that he (and his sons) were removing (and interfering) with Alice Shaw Baker's property without the conservator's

consent. (See attached hereto is a true and correct copy of said e-mail marked as Exhibit D, emphasis added.)²

Attorney Kouten's action in analyzing Ms. Shaw Baker's property, without prior authorization from plaintiff Lisa Fisher creates additional problems necessitating his removal as counsel. He has information about Ms. Shaw Baker's estate property.

There can be no doubt that Attorney Kouten gained confidential information which impacts these proceedings. On December 18, 2008, Attorney Kouten e-mailed Plaintiff Lisa Fisher and told her in part:

"I have been checking on Alice and she has been in good spirits. I will continue to visit until the court relieves me. Please call me if you need me to do anything for Alice. I have yet to see any report from doctors. I will keep you posted."

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit E)

His actions were so imposing that they interfered with the powers of the Guardian/Conservator, Lisa Fisher, because he was acting as the investigating arm of the court. Plaintiff Lisa Fisher had no knowledge about any relationship of Attorney Kouten with Defendants, and that information provided to him would be transmitted to defendants in their scheme to gain control of the assets. Plaintiff Lisa Fisher maintained

² Attorney Kouten undermined Lisa Fisher's authority. Plaintiff Lisa Fisher had already specifically told Alice Shaw Baker's caregivers that they were not to interfere with or rummage through Ms. Shaw Baker's property. All of this was contrary to the best interest of Ms. Shaw Baker. These same caregivers acted in concert with Attorney Kouten's clients, Defendants herein, to try and gain control and custody of the real property and monies for Defendants' sake. These were the same caregivers, who Attorney Kouten, used to seek information about the whereabouts of the revoked will and to deceive Lisa Fisher.

contact with him to ensure compliance with the probate court's order. In Attorney Kouten's e-mail to her, the communications concerning the doctor and the court's orders, included his statement: "Be assured that I will help check on Alice as long as you like. Peter"³ (Attached hereto is a true and correct copy of said e-mail marked as Exhibit F)

In another e-mail, on January 2, 2009, Attorney Kouten disclosed, not only that he had "ex parte" communications with the court about Ms. Shaw Baker, but that he wanted to interfere with Plaintiff Lisa Fisher's function, as guardian :

"I spoke with the court on Wednesday and they suggested mailing her [Former temporary guardian Jane Orenstein] a confirmation of our discussion after we speak.

I will make sure she knows:

1. She is no longer appointed in any capacity as it applies to Alice.
2. any contact re: Alice should come through me or John or Lisa"

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit G,

emphasis added)⁴

³ Plaintiff Lisa Fisher (as outlined in her affidavit) was not, nor did she ever request, help from Attorney Kouten. She was required to maintain contact with him in compliance with the court order, and required to communicate with him about the desires and needs of Alice Shaw Baker, and ensure that he had correct information that he was providing to the court. Nor did she request Attorney Kouten "check" on Alice Shaw Baker.

⁴ At the time, Plaintiff did not realize the import of the communications between the Court and Attorney Kouten. However, She became alarmed, once she realized neither she nor her counsel, were present at the time of these communications in violation of rules governing ex parte communication.

This pattern of ex parte communication and lack of notice continued after Ms. Shaw Baker's death, Attorney Kouten has now admitted to submitting an ex parte proposed order in June 2009 in the Will Contest action, where he did not copy opposing counsel. He also did Not give notice to family with regard to the informal probate. He engaged in ex parte communication on other occasions.

On January 5, 2009, Attorney Kouten communicated directly with the former temporary co-guardian, Jane Orenstein, stating emphatically:

" The important outcome is that you are noticed that I am continuing in my duties as Court-Appointed Visitor."

(Attached hereto is a true and correct copy of said e-mail marked as Exhibit H, emphasis added)

Plaintiff sent Attorney Kouten gift certificates for work that his children did on Alice Shaw Baker's behalf, which he acknowledged. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit I). Neither plaintiff, nor Lisa Fisher as conservator, had requested him to do any work on the decedent's behalf.

With said e-mail, he attached his weekly report demonstrating that he was continuing to report to the court on Ms. Shaw Baker's care. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit J).

Said e-mail included an invoice requesting payment of fees in the amount of \$1,275.00. (Attached hereto is a true and correct copy of said invoice marked as Exhibit K).

At the same time, he included an order regarding his fees. (Attached hereto is a true and correct copy of said proposed order marked as Exhibit L).

On January 14, 2009, Attorney Kouten e-mailed Lisa Fisher regarding the care and doctor's reports for Ms. Shaw Baker:

"Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in

satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Waid sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted."

(Attached hereto is a true and correct copy of said email dated January 14, 2009 marked as Exhibit M, emphasis added).

In said e-mail, he forwarded a letter that he directed to Elizabeth Sykes of the Probate Court re: the report from Dr. Waid. This report outlined the cognitive and neuropsychological condition of Ms. Shaw Baker. (Attached hereto is a true and correct copy of said letter marked as Exhibit N).

Within less than a month, Alice Shaw Baker was hospitalized in an attempt to regulate her medication, when the caretakers claimed she would not take her medicine. As outlined by Lisa Fisher in her affidavit, Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's heartwrenching death on February 25, 2009—he admitted having an appointment with Defendants Huckabee and Slade to open the probate.⁵ On March 2,

⁵ It was at this same time that Defendants sent the caretakers to wrongfully get the keys to Alice Shaw Baker's home and removed property and papers. As court appointed counsel/guardian ad litem, this action was in violation of U.S. Const. Amend. IV(["The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."])

Plaintiff Lisa Fisher contends this action was at the direction of Attorney Kouten. After/at her death, Attorney Kouten asked one caregiver to get him a copy of the Will, and not inform Ms. Shaw Baker's conservator/guardian, Lisa Fisher.

2009, he filed a Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee, and failed to give notice to Plaintiff Betty Fisher. (Attached hereto is a true and correct copy of Petition for Informal Probate marked as Exhibit O, emphasis added).

Thereafter, Plaintiffs Betty Fisher and Lisa Fisher filed this Will Contest in April 27, 2009, Attorney Kouten filed on behalf of Defendants an answer. (Attached hereto is a true and correct copy of said answer marked as Exhibit P).

Plaintiffs have diligently sought to prosecute the case, have been forced to appeal prior decisions, and demanded that Attorney Kouten withdraw as counsel for Defendants.⁶ He refuses. He does so with the knowledge that he is violating the rules of Professional conduct. (See S.C. Rules Prof. Conduct, rule 1.16 (a lawyer shall not represent a client under certain circumstances and should those circumstances come to light after an attorney-client relationship has been established, a lawyer must withdraw from representation in an appropriate manner [emphasis added])).

Further, Attorney Kouten, on behalf of his clients, obtained a significant portion of Ms. Shaw Baker's estate assets, in excess of \$16,000.00, without filing an inventory in the underlying probate or obtaining a bond pursuant to the statutory requirement (S.C. Code Ann. § 62-3-605) to do so and the court order requiring a bond.

⁶ Plaintiffs moved before the Court of Appeals to remove Attorney Kouten. While the court denied the Motion, it stated:

"This decision, however, is limited to the proceeding in this court and is without prejudice to Appellants to raise their concerns and move for relief under appropriate circumstances in either the probate court or the circuit court." (Court of Appeals March 4, 2011 Order, p. 2, emphasis added).

In this case, Plaintiffs have been subjected to the knowledge that Attorney Kouten took Ms. Shaw Baker's money to represent her pursuant to court order; gained the trust and confidence of not only Ms. Shaw Baker, but of plaintiffs; interfered with her daily care, her medical treatment, and those around her—Attorney Kouten violated all of his fiduciary duties, all of his ethical duties, and all of his statutory duties. These violations mandate the grant of this motion for his disqualification as more fully set forth herein:

II.

PURSUANT TO THE STATUTORY SCHEME FOR THE PROTECTION OF THE ELDERLY, VULNERABLE, AND DISABLED. ATTORNEY KOUTEN WAS APPOINTED TO REPRESENT ALICE SHAW BAKER.

THE RULES FOR ATTORNEY CONFLICT OF INTEREST APPLIED TO ALICE SHAW BAKER AND MANDATE ATTORNEY KOUTEN'S DISQUALIFICATION AS COUNSEL FOR DEFENDANTS.

A. Kouten's Prior Representation

In the guardianship/conservatorship proceedings, Attorney Kouten was appointed visitor, guardian ad litem, and attorney on behalf of Alice Shaw Baker. The laws governing these appointments are fully set forth in South Carolina Code Ann. § 62-5-101 et seq.

Alice Shaw Baker was determined to be an "Incapacitated person" for purposes of these hearings. The definition of an "incapacitated person" is "any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent

that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property." (S.C. Code Ann. § 62-5-101(a)(1).)

Under subsection (5) of South Carolina Code Ann. § 62-5-101 (a), A "guardianship proceeding" is a "formal proceeding under the provisions of Part 3 of Article 5 (Section 62-5-301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person." Attorney Kouten was appointed to represent Ms. Shaw Baker at these proceedings.

The procedure for the determination of an incapacitated person is set forth in South Carolina Code Ann. § 62-5-303. This includes a statutory requirement that "... the court shall send a visitor to the place where the allegedly incapacitated person resides to observe conditions and report in writing to the court." (Emphasis added)

Further, the court "...shall appoint an attorney to represent him in the proceedings and that attorney shall have the powers and duties of a guardian ad litem. (see also Stefan v. Stefan, 320 S.C. 419, 465 S.E.2d 734 (Ct. App. 1995) (stating a guardian ad litem represents and protects the interests of a party during the litigation). A guardian ad litem is a representative of the court, appointed to assist it in properly protecting the interests of an incompetent person. (Shainwald v. Shainwald, 302 S.C. 453, 395 S.E.2d 441 (Ct. App. 1990), emphasis added.)

Attorney Kouten, as guardian ad litem, had a duty of advocating the best interests of his ward. Under laws governing a guardian ad litem, he should not have, in future proceedings, represented any parties with interests opposed to the best interests

of his former ward. (Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996), emphasis added.)

As evidenced in Exhibits A through N, Attorney Kouten was appointed Alice Shaw Baker's attorney, visitor and guardian ad litem. He continued to report to the court until February 2009. Under any and all of these roles, disqualification of Attorney Kouten as counsel for the defendants is mandated. It is well settled that although a ward is usually not considered a "client" of a guardian ad litem, the ward will be considered a client for purposes of the rules relating to attorney conflicts of interest. (See Townsend v. Townsend, 323 S.C. 309, 474 S.E. 2d 424 (1996), emphasis added). Here, there can be no doubt that rules relating to attorney conflicts of interest apply. He represented Alice Shaw Baker at her trial. All of the information, he obtained and provided to defendants was obtained as confidential communications.⁷

As set forth below, the laws governing attorney conflicts of interest require removal of Attorney Kouten as counsel for defendants.

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⁷ Pursuant to S.C. Ethical opinions, Opinion 12-10, a lawyer must not release confidential information to an adverse executor of the estate without obtaining an order from the probate court or as specifically authorized by the deceased client.

III.

UNDER THE PRINCIPLES SET FORTH IN TOWNSEND V. TOWNSEND
AND THE RULES OF PROF. CONDUCT, THE COURT HAS A DUTY TO
DISQUALIFY ATTORNEY KOUTEN

Under S.C. Rules Prof. Conduct, Rule 1.9, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. (Emphasis added)⁸

The decedent, Alice Shaw Baker can not (and would not) give her informed consent allowing Attorney Kouten to represent defendants.⁹

⁸ See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 132 (2000) ("[A] lawyer who has represented a client in a matter may not thereafter represent another client in the same or a substantially related matter in which the interests of the former client are materially adverse.");

See also ABA MODEL RULES OF PROF. CONDUCT § 1.9(a) (1996). Further, pursuant to the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 122 (2000)

"Informed consent requires that the client or former client have reasonably adequate information about the material risks of such representation to that client or former client."

⁹ See United States Supreme Court decision regarding application of the attorney client privilege after death. (See *Swidler & Berlin v. United States*, 524 U.S. 399, 405 (1998); see also *Glover v. Patten*, 165 U.S. 394, 406-408 (1897).)

It is well settled that under the rules relating to attorney conflicts of interest, a lawyer owes a duty of loyalty to former clients. (In re Johnson, 386 S.C. 550, 689 S.E.2d 623 (2010), Rule 407, SCACR, Rule 1.9, emphasis added)¹⁰

Concurrent conflicts of interest can arise from a lawyer's responsibilities to a former client. See Rule 407, SCACR, Rule 1.7, Comment 1.

In evaluating a lawyer guardian ad litem's potential conflict of interest in subsequent relations, matters are "substantially related" when the guardian ad litem reasonably could have gained information in the first matter that would be relevant to the second matter. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

Here, as Decedent's Guardian ad Litem, Kouten, conducted an investigation pursuant to S.C. Code Ann. § 62-5-303 and represented Decedent as her Guardian ad Litem pursuant to S.C. Code Ann. § 62-5-407(b). As evidenced by Exhibits A through N, Kouten regularly visited with Decedent from October 2008 through February 2009, and

¹⁰ Moreover, South Carolina Ethical Opinion 94-14 (1994) explains the relationship in cases of "conflict of interest" in conservatorship and estate proceedings. In said case, the attorney represented the grandmother as personal representative of the estate of her son and as conservator of her grandson. A conflict of interest arose with regard to life insurance proceeds. The conflict of interest between the grandmother and grandson required the attorney to withdraw from representation of the grandmother and also would prohibit the attorney from assuming representation of the grandson without the grandmother's consent.

Other jurisdictions have also discussed the significance of former representation, See *In re Hostetter*, 238 P. 3d 13 (2010), where the Oregon Supreme Court found an attorney is prohibited from engaging in a former-client conflict of interest even when the former client is deceased.

irrefutably obtained confidential communications and information that is relevant to this Will Contest.¹¹

Attorney Kouten has a duty of advocating Ms. Shaw Baker's true interests regarding the disposition of her estate. The positions of Kouten's former ward, Ms. Shaw Baker, and those of his current clients, Defendants ("the Contested Beneficiaries"), have evolved to become adverse. Moreover, Attorney Kouten's clients, the Contested Beneficiaries, will not inherit if the contested will is found invalid or revoked. Additionally, Plaintiffs have filed on behalf of Ms. Shaw Baker's estate an Action against Attorney Kouten and Defendants for their abuse and neglect of Ms. Shaw Baker as a vulnerable adult. (See *Betty Fisher, as Real Representative for Alice Shaw Baker v. Bessie Huckabee, et al.*, Circuit Court Case no. 2012-CP-10-1332)

It is not for Attorney Kouten to determine the veracity of the conflicting allegations regarding the validity of Decedent's May 21, 2001 will, nor the veracity of the conflicting allegations regarding the Contested Beneficiaries' neglect of Decedent as a vulnerable adult. Instead, he has a duty to withdraw. A lawyer shall not represent a client if representation is adverse to another client's interests unless both clients consent. (See *In re Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010); Rule 407, SCACR, Rule 1.7, emphasis

¹¹ One of the issues at trial is Ms. Shaw Baker's revocation of the alleged "Will" probated by Defendants. Attorney Kouten has confidential information which mandate his withdrawal (or in this case disqualification/removal). (S.C. Rules Prof. Conduct, rule 3.7 [A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...]; see also S.C. Bar Eth. Adv. Op. 91-26 [where an attorney was both guardian ad litem and advocate in a potential involuntary commitment proceeding, that attorney may not act as witness and advocate (citing Rule 3.7 of the Rules of Professional Conduct)]; and see Rule 1.6.390 [confidential communications])

added.) If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer obtains consent from both clients.

Attorney Kouten has purposefully and blatantly continued to represent clients (Defendants herein) who have an adverse interest to the true intentions of Alice Shaw Baker—his former client. He has done so with knowledge that Ms. Shaw Baker was devoted to animal rights, intended that all of her property and monies go to these animal charities, and that Defendants falsely claimed to Alice Shaw Baker that they owned an animal charity! He has done so with the knowledge that he obtained confidential information from Ms. Shaw Baker. (See Exhibits A through N) Finally, he is charged with knowing that Ms. Shaw Baker, due to her untimely and suspicious death,¹² can not consent or waive the conflict.

IV. PRAYER

The Court has ample authority, and, in fact, a duty to remove Kouten from representation of the Defendants. Attorney Kouten has placed himself in a position of divided loyalties where he attempts to represent Defendants when they are adverse to his former client.

This is in direct conflict of interest and a ground for disqualification. The paramount concern to preserve public trust in the scrupulous administration of justice, the

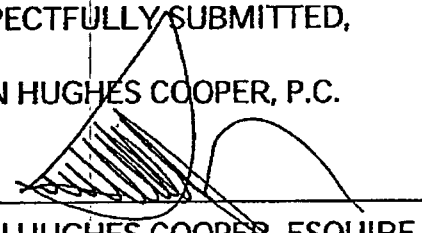
¹² Despite specific orders by Plaintiff Lisa Fisher that all medical efforts were to be made for Alice Shaw Baker's medical condition, Plaintiff Lisa Fisher discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital.

ethical considerations that affect the fundamental principles of the judicial process and the integrity of the bar mandate his withdrawal. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

WHEREFORE, Plaintiffs respectfully move to disqualify and remove Peter A. Kouten from representation of any party in this matter due to his conflict of interest.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 
JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

CAIN DENNY, ESQUIRE

Federal ID 7383

South Carolina Bar 13590

CAIN DENNY, P.A.

P.O. Box 1205

Charleston, S.C. 29402

cain.denny@gmail.com

843-965-5400; fax 843-883-9335

ATTORNEYS FOR PLAINTIFFS

July 30, 2012

will

AFFIDAVIT OF LISA FISHER

PERSONALLY APPEARED before me LISA FISHER, who being first duly sworn, stated as follows:

1. My name is Lisa Fisher, and I am over the eighteen and of sound mind.
2. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I could and would competently do so. I am an attorney in good standing in the State of California.
3. I am one of the plaintiffs in this matter. Alice Shaw Baker was my great aunt. I was the guardian and conservator of Alice Shaw Baker during her life.
4. I have reviewed the Motion and Statement of Facts in this Motion for Disqualification/ Removal of Peter A. Kouten due to his Conflict of Interest.
5. As set forth in the motion, Peter Kouten was appointed to represent the decedent, Alice Shaw Baker at trial. On October 20, 2008, he filed a visitor's report. (Attached hereto is a true and correct copy of said report marked as Exhibit A) He was appointed to represent Ms. Shaw Baker at the trial in opposition to the conservatorship. At the conclusion of the trial, the court ordered him to continue as Ms. Shaw Baker's visitor, visiting her every week until her death.
6. He submitted numerous bills and reports to the court as Attorney, Visitor,

and Guardian ad litem. For example, On December 23, 2008, Attorney Kouten submitted his monthly visitor's report to the Probate Court. (Attached hereto is a true and correct copy of said report marked as Exhibit B)

7. Accompanying that report was a bill for services rendered to Alice Shaw Baker, directed to me, requesting payment in the amount of \$4,500.84. (Attached hereto is a true and correct copy of said bill marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84).

8. He also emailed me on or about December 23, 2008 wherein he informed me that he (and his sons) were removing (and interfering) with Alice Shaw Baker's property without my consent. (See attached hereto is a true and correct copy of said e-mail marked as Exhibit D, emphasis added.)

9. On December 18, 2008, Attorney Kouten e-mailed Plaintiff Lisa Fisher. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit E)

10. I had no knowledge about any relationship of Attorney Kouten with Defendants, and that information provided to him would be transmitted to defendants in their scheme to gain control of the assets.

11. I maintained contact with Attorney Kouten to ensure compliance with the probate court's order. I did not request help from Attorney Kouten. I did not ask Attorney Kouten "check" on Alice Shaw Baker. (Attached hereto is a true and correct copy of an e-mail from Peter Kouten dated January 16, 2009 marked as Exhibit F)

12. Attached hereto is a true and correct copy of an e-mail from Attorney Kouten dated on January 2, 2009 marked as Exhibit G. Attorney Kouten admitted to ex parte communications both in the probate court and in the circuit court, prior to and after Alice Shaw Baker's death.

13. On January 5, 2009, Attorney Kouten communicated directly with the former temporary co-guardian, Jane Orenstein. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit H)

14. Attached hereto is a true and correct copy of an email from Attorney Kouten acknowledging gift certificates for work that his children did on Alice Shaw Baker's behalf. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit I).

15. With said e-mail, he attached his weekly report demonstrating that he was continuing to report to the court on Ms. Shaw Baker's care. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit J).

16. Said e-mail included an invoice requesting payment of fees in the amount of \$1,275.00. (Attached hereto is a true and correct copy of said invoice marked as Exhibit K).

17. At the same time, he included an order regarding his fees. (Attached hereto is a true and correct copy of said proposed order marked as Exhibit L).

18. On January 14, 2009, Attorney Kouten e-mailed me regarding the care and doctor's reports for Ms. Shaw Baker. (Attached hereto is a true and correct copy of said

email dated January 14, 2009 marked as Exhibit M, emphasis added).

19. In said e-mail, he forwarded a letter that he directed to Elizabeth Sykes of the Probate Court re: the report from Dr. Waid. This report outlined the cognitive and neuropsychological condition of Ms. Shaw Baker. (Attached hereto is a true and correct copy of said letter marked as Exhibit N).

20. Within less than a month, Alice Shaw Baker was hospitalized in an attempt to regulate her medication, when the caretakers claimed she would not take her medicine. Despite my specific orders that all medical efforts were to be made for Alice Shaw Baker's medical condition, I discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital. Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's heartwrenching death on February 25, 2009—he admitted having an appointment with Defendants Huckabee and Slade to open the probate.

21. On March 2, 2009, he filed a Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee, and failed to give notice to Plaintiff Betty Fisher. (Attached hereto is a true and correct copy of Petition for Informal Probate marked as Exhibit O, emphasis added).

22. Thereafter, Plaintiffs Betty Fisher and Lisa Fisher filed this Will Contest in April 27, 2009, Attorney Kouten filed on behalf of Defendants an answer. (Attached hereto is a true and correct copy of said answer marked as Exhibit P)

//

23. My great aunt was greatly loved and respected by her family, and her untimely death was devastating. I respectfully request that the court grant this motion to disqualify and/or remove Attorney Kouten.

24. FURTHER, AFFIANT SAYENT NAUGHT.

By

Lisa Fisher

Subscribed and sworn to before me

This _____ day of July, 2012

(SEAL)

Notary Public

My Commission Expires: _____

See attached

JURAT

State of California

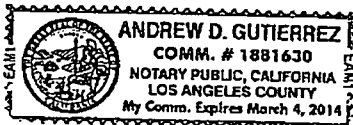
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on

this 31st day of July, 2012

by Lisa Fisher

~~personally known to me or~~ proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature

A large, stylized handwritten signature in black ink, likely belonging to the notary public, Andrew D. Gutierrez.

Re: Affidavit of Lisa Fisher

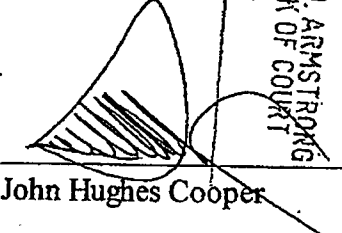
2009-CP-10-3010

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2012 we served a copy of MOTION BY PLAINTIFFS BETTY FISHER AND LISA FISHER TO DISQUALIFY AND REMOVE OPPOSING COUNSEL PETER KOUTEN DUE TO NON-WAIVABLE CONFLICT OF INTEREST; MEMORANDUM OF LAW; AFFIDAVIT OF LISA FISHER upon all counsel of record by email and by first class mail as follows:

Hon. Mary Frances Jowers
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457

FILED
2012 AUG -1 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY

John Hughes Cooper

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

Fisher,)
Plaintiff,)
v.)
Bessie Huckabee, etal.,)
Respondents.)

MEMORANDUM OPPOSING
DISQUALIFICATION AND REMOVAL
OF COUNSEL

2012 NOV 28 AM 9:02
JUDGE J. ARMSTRONG
CLERK OF COURT

FILED

INTRODUCTION

Defendant, Peter-A. Kouten, Esquire, is in opposition to his removal a counsel for the Defendants in this matter. Plaintiff Betty Fisher claims to be the "real representative for Alice Shaw-Baker" although she has never been formally or informally recognized as such. Counsel for the Defendants in this matter has agreed to represent each Defendant and their interests in these matters are not adverse.

FACTS

Alice was identified by the City of Charleston as one who would be considered vulnerable. She was getting lost in the neighborhood while walking and she would make phone calls at odd hours as her sleep schedule was maladjusted. When she was identified by the City of Charleston Elder Support Coordinator, Elisabeth Spencer, it became apparent to Ms. Spencer that Alice needed help. Emergency appointment of temporary guardian and temporary conservator were sought. The probate court appointed Defendant Kouten, attorney and Guardian ad litem for Alice Shaw-Baker. Defendant Kouten was not involved with the emergency appointment or temporary appointment. In meeting with Alice, it was apparent she would do anything to stay in her house, although

she has long-term care in place, so that she could smoke. By the time Defendant Kouten was appointed, certain fire hazards had been removed from the house. The house had been painted, a smoke detection system was added and new carpeting was installed. All her belongings, including files and papers, were reviewed and placed in a briefcase prior to my appointment. In the Visitor's Report, Defendant Kouten indicated that Alice's attorneys were John Hughes Cooper and Cain Denny. She later informed me they were not her attorneys. They were instrumental in cleaning the house, painting, reviewing documents, throwing out trash, ensuring Alice had a hotel reservation when the carpet was installed, et cetera. The report also indicated that Alice did not believe she needed a guardian or conservator, but if one were to be appointed, she would want Lisa Fisher. Alice wanted Lisa as guardian because she claimed that Lisa would allow her to stay in her house so she could smoke. The probate court determined that Alice was incapacitated. Defendant Kouten did not meet the other Defendant's prior to the final hearing for permanent appointment of guardian and conservator. I visited Alice on numerous occasions per the orders of the probate court. Her death came as a surprise. Defendant Bessie Huckabee was named as personal representative in Alice's Last Will. She called me after Alice died and she asked me to assist her in the administration of the estate. I agreed to assist her in the estate administration as it was in furtherance of Alice's last wishes. It is important to note that the probate court, upon final appointment of guardian and conservator, sought and was furnished with a copy of Alice's last will. Defendant Huckabee was appointed personal representative after Alice's original Last Will and Testament was presented to the probate court estate division by attorney for the Plaintiffs. Petition was filed by Plaintiffs to void appointment of personal

representative, contest the Will, appoint an intestate heir as personal representative, and contest the beneficiary designations of additional non-probate assets. These actions were moved to Charleston County Court of Common Pleas by statutory right. Defendant Kouten assisted Defendants Huckabee, Passailaigue and Byrd in providing Answers to the Complaint in the aforementioned action.

Plaintiff sought a Temporary Restraining Order against the personal representative of the estate which was granted following a hearing on May 22, 2009. The court's order of restraint stated that the personal representative was restrained from doing everything, leaving the estate unprotected. On or about May 28, 2009, Defendant Kouten filed a motion for modification and a motion for reconsideration on behalf of the estate personal representative seeking to allow the personal representative to administer the estate and limit the restraint to distribution of estate assets. At a hearing heard on June 8, 2009, modification was granted as in the best interest of the estate. The modification ruling was appealed to the South Carolina Court of Appeals and was affirmed by a three judge panel. It was appealed en banc and affirmed again. Finally, Plaintiffs Writ was denied on June 2, 2011 by the South Carolina Supreme Court. The order that had been appealed dealt strictly with the modification of a Temporary Restraining Order. No lower court has heard any issues pertaining to any substantive issues in these matters. This did not prevent Plaintiffs as Appellants from listing numerous additional issues on appeal. The process was time consuming and costly and was a huge waste of resources as the personal representative was merely seeking the ability to fulfill her duties as required by statute.

During the appeal process, Plaintiffs did not seek hearing on the Will Contest and all other unrelated matters. Plaintiff Lisa Fisher, after being discharged as conservator, filed and affirmed a final accounting with the probate court. Plaintiff Lisa Fisher was granted extension to turn over estate assets until the merits hearing could be held. As two and a half years passed without resolution, the probate court sought accounting of estate assets held by conservator. When Lisa Fisher provided the accountings, it was disturbing to note that she was spending estate money without permission or authority from the probate court. The probate court, upon hearing of the matters of accounting, ordered that a special fiduciary be appointed to receive the estate assets. That order is currently on appeal and the final accounting and subsequent accountings have not been approved by the probate court. Plaintiff Lisa Fisher remains in possession and control of the estate assets. There are no less than five causes of actions and/or appeals currently filed by Lisa and Betty Fisher. It will be more than four years from Alice's death before the will contest is heard.

ANALYSIS

I. REMOVAL OF COUNSEL

- A. Expense and possible delay inherent in any disqualification of counsel, with additional reasons, qualify as "substantial hardship" precluding disqualification where attorney's disqualification creates the loss of extensive knowledge of a case based upon a long-term relationship between the clients and counsel and substantial discovery conducted in the actual litigation.
- B. The Sixth Amendment of the United States Constitution has been held to protect absolutely the right of a defendant to retain counsel of his choice and to be represented in the fullest measure by the person of his choice.
- C. The Plaintiff alleges conflict between Defendants, however, based on personal knowledge, there is no apparent conflicts between the defendants in this case and the decedent, Alice Shaw-Baker.

A.

Expense and possible delay inherent in any disqualification of counsel, with additional reasons, qualify as "substantial hardship" precluding disqualification where attorney's disqualification creates the loss of extensive knowledge of a case based upon a long-term relationship between the clients and counsel and substantial discovery conducted in the actual litigation. S.C. Appellate Court Rule 407, Rules of Prof. Conduct, Rule 3.7. Although it appears that expense and delay appear to be the ally of the Plaintiff, the parties, by and through their attorneys, have consented to a scheduling order to hear the 2009 will contest action. Substantial hardship has been created by the Plaintiff in not objecting to counsel prior to now in that extensive knowledge obtained by Defendant Kouten directly from discovery, depositions, other witnesses and the Defendants. The Defendants worked with Alice in hospital administration positions as co-workers for many years. Additionally, all discovery is complete and depositions have been completed except for the deposition of Lisa and Betty Fisher. Removal of counsel at this stage would cause substantial hardship on all Defendants and for that reason, Plaintiff's motion to disqualify and remove counsel should be denied.

B.

The Sixth Amendment of the United States Constitution has been held to protect absolutely the right of a defendant to retain counsel of his choice and to be represented in the fullest measure by the person of his choice. Where the right to be assisted by counsel of one's choice is wrongly denied, a Sixth Amendment violation occurs regardless of whether the alternate counsel retained was effective, or whether the denial caused prejudice to the defendant. Further, because such a denial is not a trial error, meaning a

constitutional error that occurs during presentation of a case to the jury, but a structural defect, in that the constitutional error affects the framework of the trial, the Supreme Court has held that the decision is not subject to a "harmless error" analysis. Therefore, based on the Sixth Amendment of the U.S. Constitution, Plaintiff's motion to disqualify and remove counsel should be denied.

C.

The Plaintiff alleges conflict between Defendants, however, there is no apparent conflicts between the Defendants in this case and the decedent, Alice Shaw-Baker.

Plaintiff cites the Townsend v. Townsend case as support for her claims. 323 S.C. 309 (1996) Although the Townsend case addresses issues regarding conflict of interest with a divorce lawyer representing a father and who had previously acted as guardian ad litem for the minor child. The court specifically indicates that this family court matter should be used "to clarify for the Bench and Bar some of the ethical and other responsibilities of attorney guardians ad litem in the context of *custody or support actions*." (emphasis added) This case is not on point. The matter at issue is whether the prior representation did or could have revealed confidential information in the first representation that would be of significance in the second. Attorney never met with Alice privately on a one-on-one basis. Alice was under twenty four hour care. There was no confidential information revealed to the attorney. There was no information revealed to attorney that was not provided to the probate court, there can be no conflict of interest along these grounds.

Alice Shaw-Baker drafted a Last Will and it was provided to the probate court by attorney for the Plaintiff on two occasions. The probate court was aware of the last

intentions of Alice, and as there was no objection to the Last Will by any party, seeking to uphold the Last Will would be in the best interest of Alice.

Plaintiff alleges that Attorney must withdraw under "certain circumstances."

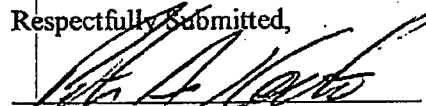
Plaintiff has alleged that she is aware of the entirety of duties of a fiduciary, the entirety of ethical duties of an attorney, and the entirety of statutory duties of a guardian ad litem.

Further, Plaintiff alleges that attorney has violated every duty imposed upon him. Plaintiff has provided no less than fifteen exhibits which all indicate that attorney acted in furtherance of the best interests of Alice Shaw-Baker while satisfying the orders of the probate court. There was no contemporaneous objection by the guardian to any acts of the guardian ad litem. For these reasons, Plaintiffs motion to Disqualify and Remove Counsel should be denied.

CONCLUSION

Based on the above, the Plaintiff's Motion to Disqualify and Remove Counsel should be denied.

Respectfully Submitted,

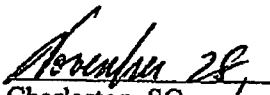


Peter A. Kouten, Esquire
PO Box 340
Johns Island, SC 29457
(843) 670-3919

**CERTIFICATE OF SERVICE
CASE NO.: 2009-CP-10-3010**

I certify that Memorandum Opposing Disqualification and Removal of Counsel in the above matter has been sent by US Mail, this date to the following:


Peter A. Kouten, Esquire
PO Box 340
Johns Island, SC 29457
843-670-3919

 28, 2012
Charleston, SC

FILED
2012 NOV 28 AM 9:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER et al
Plaintiffs,

v.

BESSIE HUCKABEE et al
Defendants,

In the Matter of
Alice Shaw-Baker.

MOTION BY PLAINTIFFS BETTY
FISHER AND LISA FISHER TO
RECONSIDER, ALTER, AMEND,
AND VACATE FEBRUARY 10, 2014 ORDER
DENYING MOTION TO DISQUALIFY AND
REMOVE OPPOSING COUNSEL PETER
KOUTEN DUE TO NON-WAIVABLE
CONFLICT OF INTEREST;
MEMORANDUM OF LAW;
AFFIDAVIT OF LISA FISHER

FILED
2014 FEB 18 PM 3:56
JULIE J. ARMSTRONG
CLERK OF COURT

COME NOW Plaintiffs Betty Fisher and Lisa Fisher by and through her undersigned counsel ("Plaintiffs"), will move this Honorable Court pursuant to South Carolina Rules of Civil Procedure §§ 59 and 60(b) for an Order Reconsidering, Amending, Altering, and Vacating this court's order filed on February 4, 2014 (and received by counsel on February 6, 2014) which issued its decision denying Plaintiffs' Motion to Disqualify and Remove Counsel Peter Kouten:

"Decision by the Court: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered...

IT IS ORDERED AND ADJUDGED: Statement of Judgment by the Court: Plaintiff's [sic] Motion to Disqualify, filed on August 1, 2012, heard by the Court on November 28, 2012, is DENIED." (Original emphasis)

The failure of the Court to state its rationale for denying the motion precludes Plaintiffs from seeking meaningful review and is in violation of Due Process and Equal Protection under the United States and South Carolina State Constitution.¹

Further grounds for the motion are that it ignores the clear mandate and public policy of the State of South Carolina to protect the elderly and to prevent attorneys from engaging in conduct which places a former client at risk of revealing confidences. Alice Shaw Baker was a resident of Charleston, SC, committed to the protection of animals and animal charities. Denial of the motion to disqualify Counsel Peter Kouten allows him to:

- 1) continue to ignore the fiduciary duty he owed Alice Shaw Baker, his ward pursuant to multiple statutory duties in the Probate Code;
- 2) use confidences obtained by and through his prior representation to her estates prejudice and for the benefit of those adverse to her known estate plan;
- 3) place his own pecuniary interests above those of his former ward, with no possibility of obtaining written consent and/or providing her with disclosure of this adverse interest, due to her untimely death;

and

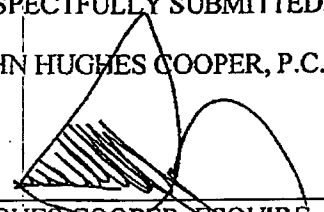
- 4) continue to violate the known public policy in the State of South Carolina to avoid conflicts that create the "appearance if not the actuality of evil" in his representation. His continued representation is a blot on the high standards held by the South Carolina Bar and as voiced by the clear legal precedent. (See S.C. Rules of Professional Conduct, including but not limited to: Rule 407, Rules § § 1.7, 1.9, et seq. and the legal authority set forth in *Townsend v. Townsend*, 323 S.C. 309, 474 S.E. 2d 424 (1996).)

¹ Plaintiffs are obliged to obtain a ruling to preserve appellate review. (See *Vespazianni v. McAlister*, 307 S.C. 411, 413)

This Motion is based on the South Carolina Rules of Civil Procedure,² and applicable case and statutory law.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

and

LISA FISHER, ESQUIRE

Pro Hac Vice

c/o JOHN HUGHES COOPER, P.C.

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

843-883-9099; fax 843-883-9335

ATTORNEYS FOR PLAINTIFF

February 17, 2014

² Herein, plaintiffs reference the South Carolina Rules of Civil Procedure as "Rule" or "Rules".

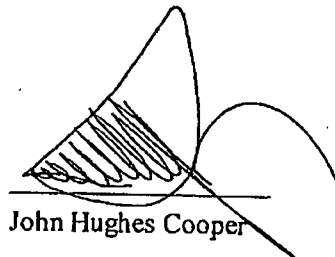
CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2014, I served a copy of the: **MOTION BY PLAINTIFFS BETTY FISHER AND LISA FISHER TO RECONSIDER, ALTER, AMEND, AND VACATE FEBRUARY 10, 2014 ORDER DENYING MOTION TO DISQUALIFY AND REMOVE OPPOSING COUNSEL PETER KOUTEN DUE TO NON-WAIVABLE CONFLICT OF INTEREST; MEMORANDUM OF LAW; AFFIDAVIT OF LISA FISHER** upon all counsel of record by email and by first class mail as follows:

Honorable Mary Frances Jowers
PO Box 11549
Columbia, SC 29211
mfjowers@scag.gov

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457
pkouten@gmail.com

W. Westbrook Wills III
38 Broad Street Ste. 200
Charleston, SC 29401
wwills@wwillslaw.com


John Hughes Cooper

FILED
2014 FEB 18 PM 4:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

2009-CP-10-3010

AFFIDAVIT OF LISA FISHER

FILED
2014 FEB 18 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me LISA FISHER, who being first duly sworn,
stated as follows:

1. My name is Lisa Fisher, and I am over the eighteen and of sound mind.
2. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I could and would competently do so. I am an attorney in good standing in the State of California.
3. I am one of the plaintiffs in this matter. Alice Shaw Baker was my great aunt. I was the guardian and conservator of Alice Shaw Baker during her life.
4. I have reviewed the Motion and Statement of Facts in this Motion for Disqualification/ Removal of Peter A. Kouten due to his Conflict of Interest.
5. As set forth in the motion, Peter Kouten was appointed to represent the decedent, Alice Shaw Baker at trial. On October 20, 2008, he filed a visitor's report. (Attached hereto is a true and correct copy of said report marked as Exhibit A) He was appointed to represent Ms. Shaw Baker at the trial in opposition to the conservatorship. At the conclusion of the trial, the court ordered him to continue as Ms. Shaw Baker's visitor, visiting her every week until her death. As early as December 2008, he knew that I was taking Alice Shaw Baker to California to be with family. Even so, he provided Defendants with advice and support, against the best interests of Alice Shaw Baker.

//

6. I am informed and believe that Peter Kouten is the former clerk for the Judge Condon in the probate court, and he knew or should have known, the ethical limitations to representing a ward under a probate guardianship and conservatorship.

7. Prior to Alice Shaw Baker's death, I learned that Defendant Kouten was instructing Huckabee and Slade on what to do and that he was interfering with my instructions to the hospital. He interfered with my authority, even convincing the hospital that he was in charge. I had to re-inform them who I was, even though they had my letters of conservatorship/guardianship. He informed the hospital to communicate with Huckabee and Slade. I found out after her death that Alice even had to ask them to leave when they were in her hospital room. Kouten admitted to me at the hospital that he spoke to the nurses on several occasions, because "they knew him since he worked with the Court." He told me that I could not go against the Power of attorney, despite knowing that the power of attorney was revoked and that I was acting in Alice's best interests. I was shocked and couldn't believe it, but I still did not know the magnitude of his interference until my great aunt died.

8. Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's unbearable death on February 25, 2009--he admitted having an appointment with Huckabee and Slade the very next morning.

9. I also know that he submitted numerous bills and reports to the court as Attorney, Visitor, and Guardian ad litem. For example, On December 23, 2008, Attorney Kouten submitted his monthly visitor's report to the Probate Court. (Attached hereto is a true and correct copy of said report marked as Exhibit B)

10. Accompanying that report was a bill for services rendered to Alice Shaw Baker, directed to me, requesting payment in the amount of \$4,500.84. (Attached hereto is a true and correct copy of said bill marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84).

11. He also emailed me on or about December 23, 2008 wherein he informed me that he (and his sons) were removing (and interfering) with Alice Shaw Baker's property without my consent. (See attached hereto is a true and correct copy of said e-mail marked as Exhibit D, emphasis added.)

12. On December 18, 2008, Attorney Kouten e-mailed Plaintiff Lisa Fisher. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit E)

13. I had no knowledge about any relationship of Attorney Kouten with Defendants, and that information provided to him would be transmitted to defendants in their scheme to gain control of the assets.

14. I maintained contact with Attorney Kouten to ensure compliance with the probate court's order. I did not request help from Attorney Kouten. I did not ask Attorney Kouten "check" on Alice Shaw Baker. (Attached hereto is a true and correct copy of an e-mail from Peter Kouten dated January 16, 2009 marked as Exhibit F)

15. Attached hereto is a true and correct copy of an e-mail from Attorney Kouten dated on January 2, 2009 marked as Exhibit G. Attorney Kouten admitted to ex parte communications both in the probate court and in the circuit court, prior to and after Alice Shaw Baker's death.

16. On January 5, 2009, Attorney Kouten communicated directly with the former temporary co-guardian, Jane Orenstein. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit H)

17. Attached hereto is a true and correct copy of an email from Attorney Kouten acknowledging gift certificates for work that his children did on Alice Shaw Baker's behalf. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit I).

18. With said e-mail, he attached his weekly report demonstrating that he was continuing to report to the court on Ms. Shaw Baker's care. (Attached hereto is a true and correct copy of said e-mail marked as Exhibit J).

19. Said e-mail included an invoice requesting payment of fees in the amount of \$1,275.00. (Attached hereto is a true and correct copy of said invoice marked as Exhibit K). At the same time, he included an order regarding his fees. (Attached hereto is a true and correct copy of said proposed order marked as Exhibit L).

20. On January 14, 2009, Attorney Kouten e-mailed me regarding the care and doctor's reports for Ms. Shaw Baker. (Attached hereto is a true and correct copy of said email dated January 14, 2009 marked as Exhibit M, emphasis added).

21. In said e-mail, he forwarded a letter that he directed to Elizabeth Sykes of the Probate Court re: the report from Dr. Waid. This report outlined the cognitive and neuropsychological condition of Ms. Shaw Baker. (Attached hereto is a true and correct copy of said letter marked as Exhibit N).

22. Within less than a month, Alice Shaw Baker was hospitalized in an attempt to regulate her medication, when the caretakers claimed she would not take her medicine. Despite

my specific orders that all medical efforts were to be made for Alice Shaw Baker's medical condition, I discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital. Peter Kouten admitted going to the hospital, admitted to communications and advocacy for Defendants, and within moments of Ms. Shaw Baker's heartwrenching death on February 25, 2009—he admitted having an appointment with Defendants Huckabee and Slade to open the probate.

23. On March 2, 2009, he filed a Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee, and failed to give notice to Plaintiff Betty Fisher. (Attached hereto is a true and correct copy of Petition for Informal Probate marked as Exhibit O, emphasis added).

24. Thereafter, Plaintiffs Betty Fisher and Lisa Fisher filed this Will Contest in April 27, 2009, Attorney Kouten filed on behalf of Defendants an answer. (Attached hereto is a true and correct copy of said answer marked as Exhibit P)

25. I am requesting that the court take judicial notice of the Affidavit of Mark Hardee, from Case no. 2012-CP-10-1332. Attorney Hardee was an Expert in related case, now dismissed, outlining Attorney Kouten's ethical code violations marked as Exhibit Q.

26. Attached hereto is a true and correct copy of a *Consent Order for Substitution of Counsel* on October 14, 2013 marked as Exhibit R.

27. My great aunt was greatly loved and respected by her family, and her untimely death was devastating. I respectfully request that the court grant this motion to disqualify. FURTHER, AFFIANT SAYENT NAUGHT.

By: _____

Lisa Fisher

2/18/14

* CALIFORNIA JURAT ATTACHED

2009-CP-10-3010

JULIE J. ARMSTRONG
CLERK OF COURT

2014 FEB 18 PM 4:02

FILED

MEMORANDUM

I.

INTRODUCTION

"Disqualification, where appropriate, ensures that the case is well presented in court, that confidential information of present or former clients is not misused, and that a client's substantial interest ...is protected." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. 1 (2000).

This matter involves the "substantial rights" of Alice Shaw Baker, and by implication, plaintiffs. Attorney Kouten's actions have caused substantial hardship, and have caused unnecessary expenses to her estate. This motion for reconsideration seeks the court's review of the evidence and law in support of the motion for disqualification. Alternatively, It provides this court with opportunity to make rulings to preserve plaintiffs' right for meaningful review of the February 6, 2014 order denying the motion for disqualification.

A. This Motion Is Governed by Rule 59 and Rule 60(b)

South Carolina Rules of Civil Procedure, Rule 59 (e) provides that: "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."

Further, South Carolina Rules of Civil Procedure, Rule 60(b) provides in pertinent part that: "On motion and upon such terms as are just, the court may relieve a party of his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;

- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void..." (Emphasis added)

The trial court erred in its issuance of the form order filed on February 4, 2014, emailed to counsel on February 6, 2014, and received notice of entry of judgment by mail on February 10, 2014, and plaintiffs seek relief as stated herein.

B. Plaintiff's Motion Is Timely Filed Pursuant to Rule 6

Pursuant to Rule 6(a), this motion is timely. Rule 6(a) provides in pertinent part that if "The last day of the period...is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such Holiday."

Here, Plaintiffs' counsel received the Order by mail on February 10, 2014, so the motion under Rule 59 (b) was to be filed on February 20, 2014. Therefore, filing on Tuesday, February 18, 2014, is a timely motion.

C. Concise Statement of Facts

On February 25, 2009, Alice Shaw Baker ("Ms. Shaw Baker") died.

Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") are the niece and great-niece of Ms. Shaw Baker. Plaintiff Lisa Fisher was the guardian and conservator of Alice Shaw Baker before her death.

Attorney Peter Kouten was the court appointed visitor, guardian ad litem and attorney for Alice Shaw Baker before her death.

Plaintiffs allege that during Ms. Shaw Baker's life, Defendants Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd ("Defendants") deceived her, and exerted undue influence to obtain her property. Ms. Shaw Baker intended to leave all her estate and monies to animal charities. Plaintiffs filed this Will Contest to ensure that Alice Shaw Baker's desires to benefit these charities is honored.

Plaintiffs have sought to disqualify Attorney Kouten for his conflict of interest in this matter.

D. Underlying Principles Mandating Disqualification of Attorney Peter Kouten

In *U.S. v. Philip Morris Inc.*, 312 F. Supp. 2d 27 (D.C. 2004) ("Philip Morris"), the court held that:

"...where there is a close question as to whether particular confidences of the former client will be pertinent to the instant case, an attorney should be disqualified to avoid the appearance if not the actuality of evil." *Id.*, 486 A.2d at 434-44 (quoting *U.S. v. Standard Oil*, 136 F.Supp. 345, 364 (S.D.N.Y.1955)). In addition, any doubts are to "be resolved in favor of disqualification." *Westinghouse Electric Corp. v. Gulf Oil Corp.*, 588 F.2d 221, 225 (7th Cir.1978)."³

Although *Philip Morris* dealt with the propriety of a former Justice Department attorney representing a party in litigation, the facts in this case mirror the interrelationship Peter Kouten had and his duties owed to Alice Shaw Baker to those of a governmental attorney:

! Here, Peter Kouten was court appointed, not merely as counsel, but also as visitor and Guardian ad litem. He had a duty to report to the court as to Alice Shaw Baker's best interests and to advocate on her behalf pursuant to statutory duties in South Carolina Code Ann. § 62-5-101 et seq.

³ See also *In re Craig*, 317 S.C. 295, 454 S.E.2d 314 (1995)[appearance of impropriety sufficient for discipline]; *In re James*, 267 S.C. 474 (1976) [A lawyer for an estate who caused the estate to engage in unnecessary litigation with respect to which he received a substantial fee and deceitfully concealed his dual capacity as executor and attorney for executor was indefinitely suspended.]

Further, he billed her estate directly and obtained a court order approving of his billings as outlined herein.

Finally, Peter Kouten as former clerk for Judge Condon knows, or should have known, the ethical limitations to representing a ward under a probate guardianship and conservatorship. Instead, as outlined in the affidavit of Lisa Fisher, Peter Kouten advocated on behalf of Bessie Huckabee at the Hospital where Alice Shaw Baker died, gave Bessie Huckabee, advice at the hospital, while Alice Shaw Baker was alive, and made an appointment with Defendants to open probate the night she died.

This matters involves a Will Contest, Breach of Fiduciary Duty, Undue Influence, etc., and plaintiffs assert Attorney Peter Kouten's continued participation must be stopped. As the court in *Philip Morris* explained that in cases where the representation by a government attorney is substantially related to current representation, the test is "meant to induce a former government lawyer considering a representation to err well on the side of caution." (*In re Sofaer*, 728 A.2d 6228 A.2d 625, 628 (D.C.1999).) Attorney Kouten has had considerable time to rethink his ways and "err on the side of caution, however he has instead attempted to mislead the court, even going so far to file a *Consent Order for Substitution of Counsel* on October 14, 2013. (See Ex. R) Nevertheless, it is Attorney Kouten who continues to defend this action and represent Defendants.

Plaintiffs bring this motion pursuant to Rules 59 and 60 to ensure that the court fully consider the legal authority surrounding this *Motion to Reconsider, Alter and Amend* and to

consider the implications of allowing Attorney Kouten to remain counsel, in a position adverse to Alice Shaw Baker and adverse the laws protecting the elderly in South Carolina.

II.

EVIDENCE TO CONSIDER

Plaintiffs ask the court to consider the affidavits attached to this motion in their entirety, including the foundations and exhibits briefly summarized herein:

1. Attorney Peter Kouten's visitor's report concerning Alice Shaw Baker dated October 20, 2008 to the probate court marked as Exhibit A.
2. Attorney Peter Kouten's visitor's report concerning Alice Shaw Baker dated December 23, 2008 to the probate court marked as Exhibit B.
3. Bill from Attorney Peter Kouten for representation of Alice Shaw Baker marked as Exhibit C, including the prior order of November 12, 2008 in the amount of \$3,915.84, for a total amount of \$4,500.84
4. Email to Lisa Fisher, conservator and guardian, wherein Peter Kouten was removing Alice Shaw Baker's property without the conservator's consent marked as Exhibit D.
5. Email to Lisa Fisher, conservator and guardian, wherein Peter Kouten indicated he was checking on Alice Shaw Baker dated December 18, 2008 marked as Exhibit E.
6. Email dated January 16, 2009 from Attorney Peter Kouten marked as Exhibit F.

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7. Email dated January 2, 2009 wherein Attorney Peter Kouten admitted ex parte communication with the probate court marked as Exhibit G.⁴
8. Email to former temporary co-guardian Jane Orenstein wherein Attorney Peter Kouten stated "you are noticed that I am continuing in my duties as Court-Appointed Visitor" marked as Exhibit H.
9. Email wherein Attorney Kouten acknowledge gift certificates for work that his children did on Alice Shaw Baker's behalf marked as Exhibit I).
10. Email with weekly report to the court marked as Exhibit J.
11. Invoice from Attorney Peter Kouten requesting payment of fees in the amount of \$1,275.00 marked as Exhibit K.
12. Order from the probate court regarding Attorney Peter Kouten's fees marked as Exhibit L.
13. Email dated January 14, 2009 from Attorney regarding the care and doctor's reports for Ms. Shaw Baker marked as Exhibit M.
14. Letter directed to Elizabeth Sykes of the Probate Court re: Dr. Waid's regarding Alice Shaw Baker marked as Exhibit N.
15. Petition for Informal Probate seeking the appointment of Defendant Bessie Huckabee as Personal Representative failing to give notice to Plaintiff Betty Fisher marked as Exhibit O.
16. Attorney Kouten's answer on behalf of the Defendants to Plaintiffs' Will Contest marked as Exhibit P.
17. Affidavit of Mark Hardee, Case no. 2012-CP-10-1332, Expert in related case, now dismissed, outlining Attorney Kouten's ethical code violations marked as Exhibit Q.

⁴ As outlined in the original motion, Plaintiff Lisa Fisher did not realize the import of the communications between the Court and Attorney Kouten. However, She became alarmed, once she realized neither she nor her counsel, were present at the time of these communications in violation of rules governing ex parte communication.

This continued pattern of ex parte communication and lack of notice has been prevalent after Ms. Shaw Baker's death and throughout this litigation. E.g., Attorney Kouten admitted to submitting an ex parte proposed order in June 2009 in the Will Contest action, where he did not copy opposing counsel. He also did Not give notice to family with regard to the informal probate. His continued ex parte communication has prejudiced plaintiffs.

18. Affidavit of Lisa Fisher outlining Attorney Kouten's actions at the hospital during Alice Shaw Baker's life, wherein he advised Bessie Huckabee, discussed Huckabee's rights as power of attorney (despite previous court order terminating said powers), and making an appointment with Defendants mere minutes after Alice Shaw Baker's death. He took this action despite knowing for over three months, since December 2008, that Lisa Fisher was taking Alice Shaw Baker to California to be with her family.
19. Attorney Kouten has had considerable time to rethink his ways, and in fact filed a *Consent Order for Substitution of Counsel* on October 14, 2013 marked as Exhibit R.

III.

DISQUALIFICATION MOTIONS IMPLICATE CONSTITUTIONAL CONSIDERATIONS AND MANDATE ATTORNEY KOUTEN'S REMOVAL

It is well settled that due process is violated when a party is denied fundamental fairness.

(*City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968).)

However, due process is flexible and calls for such procedural protections as the particular situation demands. (*Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006).)

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. (*S.C. Dep't. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).)

Moreover, The requirements of equal protection are met if: (1) a classification bears a reasonable relationship to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances; and (3) the classification rests on a reasonable basis. The constitutional guaranty of equal protection of the law requires all members of a class to be treated alike under similar circumstances and conditions, and that any

classification not be arbitrary but bear a reasonable relation to the legislative purpose sought to be effected. (*Broome v. Truluck*, 270 S.C. 227, 230, 241 S.E.2d 739 (1978).)

Plaintiffs argue that Attorney Kouten's prior position with the probate court, ex parte communications in this case, and continued representation adverse to Alice Shaw Baker have effectively prejudiced Alice Shaw Baker's estate and plaintiffs in this matter. This denies Alice Shaw Baker and plaintiffs due process pursuant to U.S. Const. Amend XIV; S.C. Const. Article I, sct 14, and *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L. Ed 2d 49 (2000).

It is well settled that due process rights are implicated when a court makes findings where the record is devoid of evidence (see *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 285, 433 S.E.2d 856 (1993) [bias demonstrated when factual findings not supported by the records]), conversely a lack of findings also implicates the Constitution.

Also, the fact that the grant of the motion would entitle defendants to an immediately appealable order (see *Hagood v. Sommerville*, 362 S.C. 191, 194 (2005)), directly deprives plaintiffs of a similar right when the motion is denied, constitutes a violation of equal protection. The rights that are affected by these proceedings, including Alice Shaw Bakers and her subsequent beneficiaries, will be forever affected if Peter Kouten is allowed to proceed in this case.

IV.

PLAINTIFFS DO NOT WAIVE THEIR ARGUMENT THAT ATTORNEY KOUTEN'S CONFLICT OF INTEREST MANDATES DISQUALIFICATION.

Plaintiffs continue to assert their position that Attorney Kouten's prior representation as a court appointed visitor, guardian ad litem, and attorney on behalf of Alice Shaw Baker prohibits

his continued representation of defendants in this matter. (See S.C. Code Ann. § 62-5-101(a)(1); § 62-5-101 (a) (5) ; § 62-5-303 for the statutory appointments; see also *Stefan v. Stefan*, 320 S.C. 419, 465 S.E.2d 734 (Ct. App. 1995) (stating a guardian ad litem represents and protects the interests of a party during the litigation))

Plaintiffs have included information concerning the prior conduct of Kouten at the hospital and/or behalf of Defendants during Alice Shaw Baker's lifetime (See Affidavit of Lisa Fisher) and also included the Affidavit of Mark Hardee, who opined that Attorney Kouten's concurrent and subsequent representation of the other defendants, fell below the standard of care, skill, diligence and loyalty expected of lawyers in South Carolina. This deficient conduct proximately caused injury to Ms. Shaw Baker and constitutes legal malpractice. (Ex. Q, p. 9, prg. 14)⁵

Plaintiffs also ask this court to consider the evidence, Exhibits A through R, as evidence of Attorney Kouten's misconduct with regard to his representation of Alice Shaw Baker. As previously argued, disqualification of Attorney Kouten as counsel for the defendants is mandated. It is well settled that although a ward is usually not considered a "client" of a guardian ad litem, the ward will be considered a client for purposes of the rules relating to attorney conflicts of interest. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E. 2d 424 (1996), emphasis added). Here, there can be no doubt that rules relating to attorney conflicts of

⁵ Plaintiffs respectfully request that the court take judicial notice of the affidavit of Mark Hardee pursuant to Rule 201. Attorney Hardee examined the information concerning Attorney Peter' Kouten's representation, and his opinion supports plaintiffs' position that the conduct justifies disqualification.

interest apply. He represented Alice Shaw Baker at her trial. All of the information, he obtained and provided to defendants was obtained as confidential communications.⁶

As set forth below, the laws governing attorney conflicts of interest require removal of Attorney Kouten as counsel for defendants.

V.

UNDER THE PRINCIPLES SET FORTH IN *TOWNSEND V. TOWNSEND* AND THE RULES OF PROF. CONDUCT, THE COURT HAS A DUTY TO DISQUALIFY ATTORNEY KOUTEN

Plaintiffs do not waive the issues raised in their original motion, and again argue that under S.C. Rules Prof. Conduct, Rule 1.9, a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. (Emphasis added)

The decedent, Alice Shaw Baker can not (and would not) give her informed consent allowing Attorney Kouten to represent defendants. (See *In re Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010) [lawyer owes a duty of loyalty to former clients]; Rule 407, SCACR, Rule 1.9, emphasis added)

Concurrent conflicts of interest can arise from a lawyer's responsibilities to a former client. See Rule 407, SCACR, Rule 1.7, Comment 1. (See *also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 132 (2000) [lawyer can not represent another client in substantially related matter]; ABA MODEL RULES OF PROF. CONDUCT § 1.9(a) (1996);

⁶ Pursuant to S.C. Ethical opinions, Opinion 12-10, a lawyer must not release confidential information to an adverse executor of the estate without obtaining an order from the probate court or as specifically authorized by the deceased client.

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 122 (2000)[informed consent must be obtained])

In evaluating a lawyer guardian ad litem's potential conflict of interest in subsequent relations, matters are "substantially related" when the guardian ad litem reasonably could have gained information in the first matter that would be relevant to the second matter. (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

It is important to remember in analysis of Attorney Kouten's conduct, that he represented Alice Shaw Baker during the trial on the conservatorship matter. One of the issues at trial is Ms. Shaw Baker's revocation of the alleged "Will" probated by Defendants. This mandates his withdrawal. (S.C. Rules Prof. Conduct, rule 3.7 [A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...]; see also S.C. Bar Eth. Adv. Op. 91-26 [where an attorney was both guardian ad litem and advocate in a potential involuntary commitment proceeding, that attorney may not act as witness and advocate (citing Rule 3.7 of the Rules of Professional Conduct); and see Rule 1.6.390 [confidential communications]].

Here, as Decedent's Guardian ad Litem, Kouten, conducted an investigation pursuant to S.C. Code Ann. § 62-5-303 and represented Decedent as her Guardian ad Litem pursuant to S.C. Code Ann. § 62-5-407(b). As evidenced by Exhibits A through R, Kouten regularly visited with Decedent from October 2008 through February 2009, and irrefutably obtained confidential communications and information that is relevant to this Will Contest.

Attorney Kouten has a duty of advocating Ms. Shaw Baker's true interests regarding the disposition of her estate. The positions of Kouten's former ward, Ms. Shaw Baker, and those of his current clients, Defendants ("the Contested Beneficiaries"), have evolved to become adverse. Moreover, Attorney Kouten's clients, the Contested Beneficiaries, will not inherit if the

contested will is found invalid or revoked. (See *In re Johnson*, 386 S.C. 550, 689 S.E.2d 623 (2010); Rule 407, SCACR, Rule 1.7 [A lawyer shall not represent a client if representation is adverse to another client's interests unless both clients consent].)

As previously argued, Attorney Kouten has purposefully and blatantly continued to represent clients (Defendants herein) who have an adverse interest to the true intentions of Alice Shaw Baker—his former client. He has done so with knowledge that Ms. Shaw Baker was devoted to animal rights, intended that all of her property and monies go to these animal charities, and that Defendants falsely claimed to Alice Shaw Baker that they owned an animal charity! He did this at a time when Alice Shaw Baker was about to travel to California to be with her family! He has done so with the knowledge that he obtained confidential information from Ms. Shaw Baker. (See Exhibits A through R) Finally, he is charged with knowing that Ms. Shaw Baker, due to her untimely and suspicious death,⁷ can not consent or waive the conflict.⁸

VI. PRAYER

Alice Shaw Baker was greatly loved by her family, and they continue to fight to ensure that her life continues to bless animals as she desired.

⁷ Despite specific orders by Plaintiff Lisa Fisher that all medical efforts were to be made for Alice Shaw Baker's medical condition, Plaintiff Lisa Fisher discovered that "Do Not Resuscitate" ("DNR") orders had been given at the hospital.

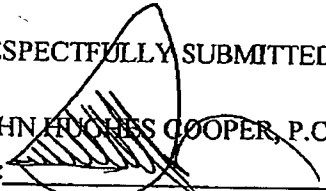
⁸ S.C. Bar Ethics Adv. Ops. # 90-18, 81-13 [Opinion that the same lawyer never may represent both the plaintiff and defendant even in uncontested divorce actions]. Plaintiffs contend that the same principle applies in a case where the interests of a former ward are involved— as here, with Alice Shaw Baker.

If disqualification is not granted by this motion for reconsideration, South Carolina's public policy will be undermined. This policy seeks to preserve public trust in the scrupulous administration of justice, the ethical considerations that affect the fundamental principles of the judicial process and the integrity of the bar" which, in this case, mandates removal and disqualification of Attorney (See *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996).)

WHEREFORE, Plaintiffs respectfully move this court to reconsider its prior decision and/or vacate the February 6, 2014 order, and instead grant plaintiffs motion and disqualify and remove Peter A. Kouten from representation of any party in this matter due to his conflict of interest.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

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and

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Pro Hac Vice

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ATTORNEYS FOR PLAINTIFFS

February 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

[ERRONEOUSLY REFERENCED AS
CASE NO. 08-CP-10-3010]

BETTY FISHER et al
Plaintiffs,

v.

BESSIE HUCKABEE et al
Defendants,

In the Matter of
Alice Shaw-Baker.
Case no. 2009-ES-0378

OBJECTIONS AND OPPOSITION BY
PLAINTIFFS BETTY FISHER AND LISA
FISHER TO *NOTICE OF APPEARANCE*
FILED BY COUNSEL W. WESTBROOK
WILLS ON AUGUST 6, 2013;

MEMORANDUM OF LAW

FILED
2013 OCT -4 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COME NOW Plaintiffs Betty Fisher and Lisa Fisher and formally object to the *Notice of Appearance* filed on behalf of Defendants Bessie Huckabee (erroneously referenced as "Bessie Huchabee" in the heading), Sandra Byrd, and Kay Passailaigue ("Defendants") on or about August 6, 2013 naming W. Westbrook Wills as counsel (Attached hereto is a true and correct copy of said *Notice* and the correspondence marked as Exhibit A).

This objection is made to inform the court of the fatally defective *Notice of Appearance* (Exhibit A), lack of proper service on the Attorney General (party to this action), and to secure a ruling on plaintiffs' *Motion for Disqualification against Attorney*

Peter Kouten. Due Process mandates examination of the true facts in this case, and disqualification of Attorney Kouten as a matter of law.

As indicated in the August 6, 2013 correspondence to the clerk from Attorney W. Westbrook Wills, Defendants are attempting to maintain Peter Kouten as counsel:

“Peter Kouten will remain as counsel for the Estate of Alice Shaw Baker.” (Emphasis added)

As set forth herein, Defendants blatant attempt to undermine Plaintiffs’ *Motion for Disqualification of Peter Kouten*, by the filing of the *Notice of Appearance* by W. Westbrook Wills, is but one reason that the *Notice of Appearance* is fatally defective.

The motion for disqualification has yet to be ruled on. The parties argued the motion on or about November 28, 2012, and this court has not issued its ruling. There is currently a hearing on October 8, 2013 before the Honorable Judge Nicholson to determine Plaintiffs’ *Motion to Alter, Amend, Reconsider, and Vacate Order of May 8, 2013*. This order erroneously granted Defendants’ *Motion for Summary Judgment*.

Plaintiffs are entitled to a ruling on the *Motion for Disqualification of Counsel Peter Kouten*, in light of the harm that he has done to the decedent’s estate and his

unlawful interference with the appropriate distribution of Alice Shaw Baker's estate to Animal Charities.

Said *Notice of Appearance* is in violation of the procedures set forth in Rule 11(b) of the South Carolina Rules of Civil Procedure and the legal authority set forth in *Collins Entertainment Corp. v. Columbia "20" Truck Stop, Inc.*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000).

L

BACKGROUND INFORMATION

Alice Shaw Baker ("Ms. Shaw Baker") died on February 25, 2009. Prior to that time, the court appointed Peter Kouten as her counsel in the conservatorship case. Instead of fulfilling these duties on behalf of Ms. Shaw Baker, He has at all times acted on behalf of the Defendants, both while Alice Shaw Baker was alive and after her death, creating a non-waiveable conflict of interest.

The machinations of Defendants have required repeated efforts by Plaintiffs to protect the rights of Ms. Shaw Baker. Plaintiffs continue to seek justice on her behalf and ensure proper due process and compliance with the law.

Currently set for hearing on October 8, 2013 are Plaintiffs' *Motion to Alter, Amend, Reconsider, and Vacate Order of May 8, 2013*. The previously filed *Motion for Disqualification of Peter Kouten* has not been ruled upon yet. This motion deals with the improper conflicted and adverse representation by Peter Kouten.

II.
**DEFENDANTS ARE NOT PERMITTED TO IGNORE THE MANDATES
OF RULE 11**

Defendants' transparent attempt to proceed with this case without waiting for this court's proper ruling on the *Motion to Disqualify Attorney Kouten* can not be justified. The *Notice of Appearance* filed on or about August 6, 2013 does not resolve the issues set forth in the *Motion to Disqualify Attorney Kouten*.

Further, the *Notice* is fraught with procedural errors, including erroneous case number, misspelling of Defendant Huckabee's name, lack of consent by clients, and most importantly, lack of court order.

As interesting is the correspondence of August 6, 2013 which intends to separate the duties of Peter Kouten as counsel in this case. The estate case 2009-CP-10-3010 is a removal case, dealing with the estate of Alice Shaw Baker. Defendant Kouten may not remain as counsel *in the underlying case*—the conflict remains. Since the Court has not ruled on the pending motion for disqualification, no findings have yet been made related to the numerous reasons for Attorney Kouten's disqualification, including but not limited to the fact that Attorney Kouten, as guardian ad litem, had a duty of advocating and protecting the best interests of his ward, Alice Shaw Baker. Under laws governing a guardian ad litem, he should not have, in future proceedings, represented any parties with interests opposed to the best interests of his former ward. (*Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996), emphasis added.)

//

Allowing Attorney Kouten to appear in *any* capacity in this case is prohibited by this relevant legal authority, and must be decided by this Honorable Court by way of the previously filed motion for disqualification of Attorney Kouten. Plaintiffs respectfully request that the court set this motion.

Therefore, Plaintiffs contest this *Notice*, because it was signed and filed by an attorney who was "not of record" in this case which renders it a legal nullity (See *Collins Entertainment Corp. v. Columbia "20" Truck Stop, Inc.*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000)).

Rule 11, SCRPC, provides, the procedure for proper substitution of an attorney:

"An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of Court, and not otherwise." (emphasis added).

In this case, there is no written consent by the clients, by relieved counsel, or by opposing counsel of the substitution of attorney and there is no mandatory court order pursuant to Rule 11(b). The court in *Culbertson v. Clemens*, 322 S.C. 20, 25 (1996) held:

"In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the court." (Emphasis added)

The court further explained in *Collins Entertainment Corp. v. Columbia "20" Truck Stop, Inc.*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 2000) that:

“Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding.”
(Emphasis added)

Attorney Kouten has purposefully and blatantly continued to represent clients (Defendants herein) who have an adverse interest to the true intentions of Alice Shaw Baker—his former client and his ward. This is improper, and Plaintiffs object to the *Notice* and any failure to adhere to Rule 11.

Finally, the *Notice of Appearance* was not properly served on all parties, i.e. the Attorney General, therefore the certificate of service is defective.

III. PRAYER

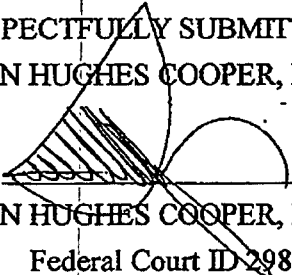
Due to the fatal procedural defects, Attorney W. Westbrook Wills is not attorney of record. Plaintiffs object to his *Notice of Appearance* in that it does not comply with South Carolina law and puts plaintiffs (and this court) in the ethical quandary of not knowing who is properly representing the parties.

//

Plaintiffs further object because the *Notice of Appearance* attempts to interfere with the timely ruling on their *Motion for Disqualification*.

WHEREFORE, Plaintiffs respectfully request that the court consider the notice of appearance a nullity for hearing and issue its order on plaintiffs' *Motion for Disqualification* removing Peter A. Kouten from representation of any party in this matter due to his conflict of interest.

RESPECTFULLY SUBMITTED,
JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

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Mount Pleasant, SC 29464

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843-883-9099; fax 843-883-9335

ATTORNEY FOR PLAINTIFFS

October 4, 2013

09-3010

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2013, I served a copy of the:

**OBJECTIONS AND OPPOSITION BY PLAINTIFFS BETTY FISHER AND
LISA FISHER TO NOTICE OF APPEARANCE FILED BY COUNSEL W.
WESTBROOK WILLS ON AUGUST 6, 2013; MEMORANDUM OF LAW** upon
all counsel of record by email and by first class mail as follows:

Hon. Mary Frances Jowers
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(by email)

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340a
John's Island, SC 29457

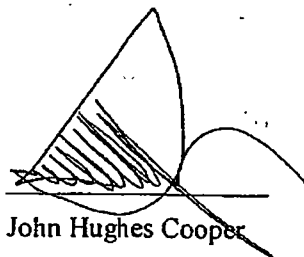
W. Westbrook Wills III
38 Broad Street Ste. 200
Charleston, SC 29401

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 OCT -4 PM 2:54

FILED



John Hughes Cooper

THE LAW OFFICE OF
W. WESTBROOK WILLS III

W. WESTBROOK WILLS III
Admitted in Georgia & North Carolina

CIVIL TRIAL LAWYER
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TELEPHONE: (843) 805-6300
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August 6, 2013

John Hughes Cooper, Esq.
John Hughes Cooper, P.C.
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Mount Pleasant, SC 29464

Lisa Fisher, Esq.
c/o John Hughes Cooper, P.C.
1476 Ben Sawyer Blvd., Suite 7
Mount Pleasant, SC 29464

Cain Denny, Esq.
Cain Denny, P.A.
PO Box 6
Sullivan's Island SC 29482

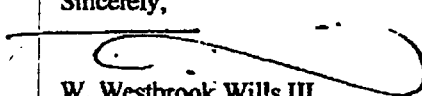
Peter Kouten, Esq.
Kouten Law Firm, LLC
8 Gillon St
Charleston, SC 29401

**RE: Fisher v. Huckabee et al., Civil Action Nos.: 2009-CP-10-3010 and
2012-CP-10-1332. Notice of Appearance of Counsel**

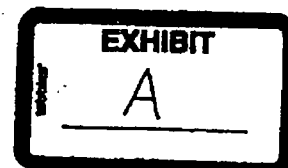
Dear Counsel:

Please find enclosed the Notice of Appearance I filed with the court this morning in the above-referenced cases. I will be representing Bessie Huckabee, Sandra Byrd, and Kay Passallaigue in the Will contest. Peter Kouten will remain as counsel for the Estate of Alice Shaw-Baker. I look forward to working with you in this matter.

Sincerely,


W. Westbrook Wills III

Enclosure (as stated)



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiff,

v.

BESSIE HUCHABEE, et al.,

Defendants.

In the Matter of the Estate of
Alice Shaw-Baker.
Charleston County Probate
No.: 2009-ES-10-0378

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 08-CP-10-3010

12-CP-10-1332

NOTICE OF APPEARANCE

2013 AUG -6 PM 1:49
JESSIE J. ARMSTRONG
CLERK OF COURT

FILED

The undersigned hereby enters his appearance as counsel of record for Defendants Bessie Huckabee, Sandra Byrd, and Kay Passailaigue in the above styled case. All papers to be served on the Defendants should be delivered to the undersigned at the addresses set out below.

Respectfully submitted,
THE LAW OFFICE OF
W. WESTBROOK WILLS III


W. Westbrook Wills III
S.C. Bar No.: 76681
38 Broad Street, Suite 200
Charleston, SC 29401
Tel: 843.805.6300
wwills@wwillslaw.com
ATTORNEY FOR DEFENDANTS

CHARLESTON, SC
August 6, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BETTY FISHER and LISA FISHER,

Plaintiff,

v.

BESSIE HUCHABEE, et al.,

Defendants,

In the Matter of the Estate of
Alice Shaw-Baker.
Charleston County Probate
No.: 2009-ES-10-0378

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 08-CP-10-3010

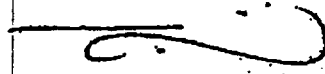
CERTIFICATE OF SERVICE

2013 AUG -6 PM 1:49
LIE J. ARMSTRONG
CLERK OF COURT

FILED

I certify that on this date a copy of the foregoing *Notice Of Appearance* was served on each party or counsel of record by hand delivery and/or U.S. Mail in the manner prescribed by the applicable Rules of Civil Procedure.

This 6th day of August 2013.


W. Westbrook Willis III

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-3010

FILED
2014 JUN 10 AM 10:13P
JULIE J. ARMSTRONG
CLERK OF COURT
BY

In the matter of ALICE SHAW BAKER,

Deceased.

BETTY FISHER
and LISA FISHER.....Appellants

v.

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE,
SANDRA BYRD, and HENRY MCMASTER, in his Capacity as Attorney General of South
Carolina, Defendants, of whom BESSIE HUCKABEE, KAY PASSAILAGUE SLADE, and
SANDRA BYRD are.....Respondents

NOTICE OF APPEAL

Betty Fisher and Lisa Fisher appeal the following judgments and final orders of the
Honorable J.C. Nicholson, Jr. denying Plaintiffs' Motion to Disqualify filed on August 1, 2012
and heard on November 28, 2012:

1. Consent Order for Substitution of Counsel dated October 10, 2013 and filed October 14, 2013;

2. Judgment dated January 30, 2014 and filed February 4, 2014;

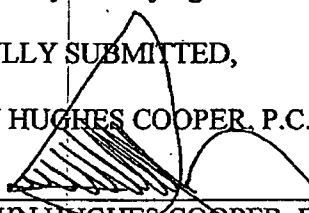
3. Judgment dated May 5, 2014 and filed May 7, 2014.

Appellant received written notice of entry of this judgment on May 12, 2014.

RESPECTFULLY SUBMITTED,

June 10, 2014

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

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ATTORNEYS FOR APPELLANTS

Other Counsel of Record:

Hon. Mary Frances Jowers, Assistant Attorney General
The Honorable Alan Wilson
Attorney General of South Carolina
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803-734-3970
Attorney for Defendant Attorney General

Peter A. Kouten, Esquire
Kouten Law Firm, LLC
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John's Island, SC 29457
843-670-3919
Attorney for Respondents

(Continued on next page)

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38 Broad Street Ste. 200
Charleston, SC 29401
843-805-6300
Attorney for Respondents

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2009-CP-10-3010.

FILED
2014 JUN 10 AM 10:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY: _____

In the matter of ALICE SHAW BAKER,

Deceased.

BETTY FISHER
and LISA FISHER.....Appellants

v.

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE,
SANDRA BYRD, and HENRY MCMASTER, in his Capacity as Attorney General of South
Carolina, Defendants, of whom BESSIE HUCKABEE, KAY PASSAILAGUE SLADE, and
SANDRA BYRD are.....Respondents

PROOF OF SERVICE

I certify that I have served the foregoing Notice of Appeal on Respondents and on the
Attorney General by depositing a copy of it in the United States Mail, postage prepaid, on June
10, 2014, addressed as follows:

Hon. Mary Frances Jowers, Assistant Attorney General
The Honorable Alan Wilson
Attorney General of South Carolina
PO Box 11549
Columbia, SC 29211
(By email)

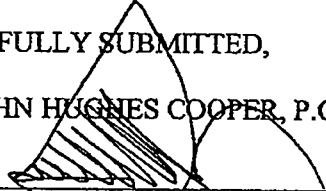
Peter A. Kouten, Esquire
Kouten Law Firm, LLC
P.O. Box 340
John's Island, SC 29457

W. Westbrook Wills III, Esquire
38 Broad Street Ste. 200
Charleston, SC 29401

June 10, 2014

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: 

JOHN HUGHES COOPER, ESQUIRE

Federal Court ID 298

South Carolina Bar 1387

State Bar of Georgia 185986

1476 Ben Sawyer Blvd. Ste. 7

Mount Pleasant, SC 29464

shiplaw@jhcooper.com

843-883-9099; fax 843-883-9335

ATTORNEYS FOR APPELLANTS

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: ALICE SHAW-BAKER

2008 OCT 20 11:23
FILED

IN THE PROBATE COURT

VISITOR'S REPORT

CASE NUMBER: 2008-GC-10-088

The undersigned court-appointed visitor in this guardianship proceeding submits the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the South Carolina Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following.

REPORT ON THE INCAPACITATED PERSON

1. Date and place of interview: October 8, 2008
308 Cassina Drive, Charleston, SC 29407
2. Oriented as to the time and place? ☒ YES ☐ NO
3. Physical Appearance: Ms. Shaw-Baker presented well. She was well-groomed and properly dressed.
4. Who are his/her closest family members? Ms. Shaw-Baker has family in Long Beach, CA
5. Does he/she have a doctor? ☐ NO ☒ YES If yes, please list the doctor's name, address, and phone number.

Dr. McGuire, Jr., M.D. 615 Wesley Dr., Ste 300 Charleston, S.C. 29407 (843) 286-4400

6. Does he/she have an attorney? ☐ NO ☒ YES If yes, please list the attorney's name, address, and phone number.

John Hughes Cooper, Esquire
PO Box 395
Sullivan's Island, SC 29482
Gail Denny, Esquire
PO Box 1205
Charleston, SC 29402

7. Does he/she think he/she needs help caring for himself/herself? ☒ NO ☐ YES If yes, in what areas?

Ms. Shaw-Baker is enjoying the company that she gets from having helpers with her. She does not believe she requires assistance.

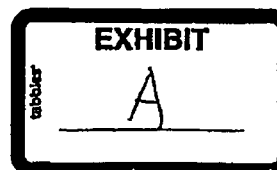
8. Would he/she like help in caring for himself/herself? ☒ YES ☐ NO

9. Does he/she know the proposed Guardian? ☒ YES ☐ NO

10. How does he/she feel about having that person appointed as his/her guardian?

Ms. Shaw-Baker is well aware of the fact that she has co-Guardians. She is opposed to the Court's insistence that she is in need of such protection. Ms. Shaw-Baker does not want Ms. Orenstein to continue in her duties. She sees Ms. Orenstein as "cold." Ms. Shaw-Baker is related by blood to her other co-Guardian, Ms. Lisa Fisher of California. Although, Ms. Shaw-Baker does not feel the need for the protection of a Guardian, she is comforted by knowing Lisa can and will assist her when it is necessary.

11. Does he/she feel any of the guardian powers or duties should be limited or restricted in any way? If so, how?



Ms. Shaw-Baker feels she should have the final decision with regard to her own care and person. She has stated that she likes having the assistants with her. She stated that she feels she is likely to continue to seek assistance and she will make these decisions with the counsel of her great-niece, Lisa Fisher. Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

12. How does he/she feel about the proposed guardianship?

Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

13. How does he/she feel about the proposed scope and duration of the proposed guardianship?

Ms. Shaw-Baker would request that no Guardian be appointed for her at this time.

REPORT ON THE PROPOSED GUARDIAN

1. Has an adult protective service case or family management case ever been opened on this person? ☒ NO ☐ YES
If yes, please explain.

If yes, does the DSS record reveal anything you believe the court should know? ☒ NO ☐ YES If yes, please explain.

2. Does your investigation of the proposed guardian reveal anything that you believe the court should know? ☒ NO ☐ YES If yes, please explain.

3. Does your investigation reveal any other person who should be considered to be appointed the guardian in this matter? ☒ NO ☐ YES If yes, please explain, including name, address, telephone, age, and relationship to allegedly incapacitated person.

REPORT ON CONDITION OF PRESENT PLACE OF RESIDENCE

1. Date and time visited: October 8, 2008
1530 hrs (3:30 pm)
2. Address (include street, city, county, state, zip): 308 Cassina Drive, Charleston, Charleston County,
SC 29407
3. Type of abode: single story ranch house
4. Condition:
- a. exterior clean, no repairs needed
 - b. interior: clean, no repairs needed. 1 bedroom is filled with boxes, however, there is new carpet and the walls and ceilings have been freshly painted.
 - c. utilities working: yes
 - d. cleanliness: above average
 - e. fire hazards: none noted

- f. other (explain): Ms. Shaw-Baker's house has been cleaned up and made habitable as the result of a Charleston County Probate Court Order. Ms. Shaw-Baker has had around the clock care since then and she has had help with cooking and cleaning.

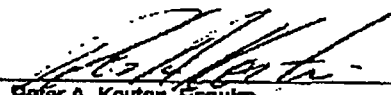
CONCLUSIONS AND ADDITIONAL COMMENTS:

Prior to your visit, did you know the person who is alleged to be incapacitated? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you know the person who is seeking appointment? ☒ NO ☐ YES If yes, please explain.

Prior to your visit, did you or do you now have a personal interest in these proceedings? ☒ NO ☐ YES If yes, please explain.

Executed this 9th day of October, 2008.

Signature: 
Name: Peter A. Kouten, Esquire
Address: 7013 Dorchester Rd, Ste E, Box 5
N Charleston, SC 29418
Telephone (O): 843-767-5284
(H): 843-670-3919

Re: Matter of Alice Shaw-Baker
Case No.: 2008-GC-10-088
Post-Hearing Court Ordered Visits

November 7, 2008

Ms. Shaw-Baker was at the rear patio with the caregiver. She was not overjoyed to see me and was of the mind that the subsequent visits were not necessary. Although agitated, she was cordial and alert. The appointment for a full neuropsychological evaluation by Randolph Waid, Ph.D. per Court's order has been set. It is in two weeks (November 20) in Mt. Pleasant. Ms. Shaw-Baker smokes outside on the patio or in the kitchen.

November 14, 2008

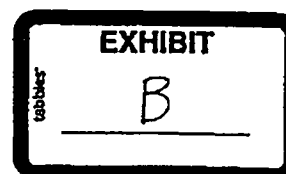
Alice was happier and in better spirits. The house is clean and the heater is operational. It is colder. She is awaiting her doctor's appointment next week. She has a hair appointment this afternoon. She is smoking outside in better weather but on cold days she smokes in the kitchen. She remains in the tiled areas of the house when smoking. The caregivers state she is sleeping well and eating properly. Lisa Fisher calls regularly and sent the caregivers each a gift (peanut brittle and box candy)

November 21, 2008

Alice had her doctor's visit yesterday. She was sleeping. She spent most of yesterday taking a battery of tests. The caregiver stated that she got home yesterday and slept from 10:30 pm to 6:00 am. It was tiring. She has been in good spirits. The POD (mobile storage unit) was re-delivered to the house so Alice could get her winter clothes. She is considering purchasing a shed for her things so that the POD can be emptied. The Guardian is awaiting doctor's results.

December 1, 2008

Alice had just woken from a nap. She has retrieved more stuffed animals from the POD. They are cleaning an area in a rear shed to accommodate the things in the POD. It is a process. The house is well-kept and uncluttered. Alice continues to smoke outside or in the kitchen per Court-Order. I spoke with Lisa Fisher regarding the doctor's report and he has not completed the final draft. She will forward the test result to the Court when they are complete. Ms. Fisher further stated that Alice will also be seeing a physician regarding her medical conditions.



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ELISABETH SPENCER,)
)
Petitioner,)
)
vs.)
)
ALICE SHAW-BAKER, an alleged)
Incapacitated person, and)
LISA FISHER, her next of kin,)
)
Respondents.)
_____)

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO: 2008-GC-10-088

**MONTHLY VISITOR'S REPORT
BY COURT-APPOINTED
GUARDIAN AD LITEM FOR
ALICE SHAW-BAKER
(NOVEMBER 1 THROUGH DECEMBER 1, 2008)**

This Court, with the Honorable Judge Tamara C. Curry presiding on October 29, 2008, heard arguments regarding the Appointment of a Guardian and Conservator for Ms. Alice Shaw-Baker. Pursuant to the Guardian and Conservator Appointment Orders for Ms. Shaw-Baker, Respondent, Lisa Fisher, has assumed the duties as permanent Guardian and Conservator for Ms. Shaw-Baker.

The Court further ordered that "until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis."

The Guardian ad litem Peter A. Kouten submits the monthly report for the time period November 1 through December 1, 2008 as Exhibit A to this report, now incorporated by reference.

Peter A. Kouten, Esquire
7013 Dorchester Road, Suite E, Box 5
North Charleston, SC 29418
Tel: (843) 767-5284
Fax: (843) 767-5286
Cell: (843) 670-3919
pkouten@gmail.com

This first day of on December, 2008.
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ELIZABETH SPENCER,

Petitioner,

vs.

ALICE SHAW-BAKER, an alleged
incapacitated person, and
LISA FISHER, her next of kin,

Respondents.

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO: 2008-GC-10-088

ORDER
GRANTING FEES TO
APPOINTED ATTORNEY AND
GUARDIAN AD LITEM

09 NOV 12 34 45 PM
CLERK OF COURT

Hearing Date:

Judge:

Petitioner:

Attorney for Petitioner:

Alleged Incapacitated Person:

Guardian ad Litem:

Other Respondent:

Attorneys for Lisa Fisher:

Temporary Co-Guardians:

Temporary Conservator:

October 29, 2008

Hon. Tamara Curry

Elizabeth Spencer

C. Mac Gibson, Jr.

Alice Shaw-Baker

Peter A. Kouton, Esq.

Lisa Fisher

John Hughes Cooper, Esq.

Cain Denny, Esq.

John Townsend Cooper, Esq.

Lisa Fisher and Jane Orenstein

Family Services, Inc.

ACC
192
11/11/08

This matter came before this Court for a hearing on appointment of Guardian and Conservator. On July 31, 2008, Elizabeth Spencer filed Petitions for a Finding of Incapacity and for Appointment of Guardian and Conservator. The Court appointed Attorney Peter A. Kouton to represent the interests of Ms. Alice Shaw-Baker in this matter. Based on the Court's request resulting from the hearing on October 29, 2008, Peter A. Kouton, Esquire has submitted for the Court's review and approval his bill for services as Ms. Shaw-Baker's attorney and Guardian *ad litem* incurred from October 6, 2008 through November 3, 2008.

FINDINGS OF FACT

After reviewing the Guardian *ad litem*'s itemized bill, I find that the professional fees requested by the GAL, Peter A. Kouton, Esquire, for the services rendered to Ms. Shaw-Baker and

ATTEST: ATTY GEN
DEPUTY CLERK
CHARLESTON COUNTY, SOUTH CAROLINA



for disbursements during the above referenced dates in the amount of \$3915.84 (THREE THOUSAND NINE HUNDRED AND FIFTEEN DOLLARS AND EIGHTY FOUR CENTS) are appropriate, fair and reasonable. Mr. Kouten is a member in good standing of the South Carolina and Charleston County Bar Associations who regularly appears before this Court. I find that the GAL's hourly rate of \$150.00 in this matter is fair and reasonable in light of his experience and training, and is within the prevailing rates of attorneys and GAL's of similar experience and training. I find that his services have been of benefit to Ms. Shaw-Baker and the other parties in this matter.

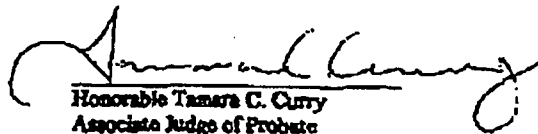
Based on the above, it is therefore

2912
11/16/08
ORDERED, ADJUDGED AND DECREED that the Conservators for Ms. Hopkins pay to the court appointed attorney and Guardian *ad litem* professional fees in the amount of \$3915.84 (THREE THOUSAND NINE HUNDRED AND FIFTEEN DOLLARS AND EIGHTY FOUR CENTS) for his services rendered and disbursements to Ms. Shaw-Baker during the above referenced dates; and it is further,

ORDERED, ADJUDGED AND DECREED that Attorney Kouten submit future periodic bills for his continued services as attorney and Guardian *ad litem* for Ms. Alice Shaw-Baker, including visits and reports to the Court, until such time as this Court deems that his services are no longer necessary in reference to the case at bar.

IT IS SO ORDERED.

4
This 13 day of November, 2008
Charleston, South Carolina


Honorable Tamara C. Curry
Associate Judge of Probate
County of Charleston

THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

December 3, 2008

Lisa Fisher, Esquire

PO Box 91112

Long Beach, CA 90809-1112

Re: Matter of Alice Shaw- Baker

Case No.: 2008-GC-10-088

DATE	DESCRIPTION	HOURS	AMOUNT
11/7/08	Court Ordered weekly visit per Judge Curry NOTE: all visit summaries are attached and Incorporated by reference	1.7	\$255.00
11/14/08	Weekly Visit	.6	90.00
11/21/08	Weekly Visit	1.2	180.00
12/1/08	Weekly Visit	.4	60.00
SUBTOTAL FOR SERVICES THROUGH Dec 3, 2008			\$585.00
SUBTOTAL FOR SERVICES THROUGH Nov 3, 2008 (prior invoice)			3915.84
TOTAL DUE			<u>\$4500.84</u>

Print

Page 1 of 1

Subject: Alice Shaw-Baker report
From: Peter Kouten (pkouten@gmail.com)
To: shiplaw@jhcopper.com; ifisher8736@yahoo.com;
Date: Tuesday, December 23, 2008 8:51 AM

Dear John and Lisa:

Please find attached report that was forwarded to the court last month. I will continue to forward you these monthly until I am relieved. Note that Family Services did pay the initial invoice so the amount due is for November visits only. I will be sending a December visitor's report next week so if you want to wait for then to send payment, that is fine. I saw Alice yesterday and she was agitated. Money issues. See wanted me to come back today to see what was left in the POD. I hope to make sure it is empty today. Call me with any questions or comments and have a Merry Christmas.

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road, Suite E

North Charleston, SC 29418

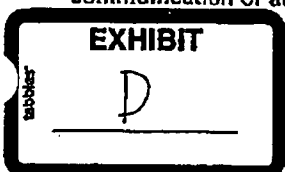
office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286

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<http://us.mg5.mail.yahoo.com/neo/launch?.rand=45mpaf7vleslt>

7/30/2012

123

Subject: Family Services
From: Peter Kouten (pkouten@gmail.com)
To: lfisher6736@yahoo.com;
Date: Thursday, December 18, 2008 6:14 AM

Lisa:

I hope all is well for you. I understand from Alice that you are in a large trial.

I have your letter dated December 7. I wanted to relay to you that I have received a check from Family Services for my initial invoice so that the balance due is the \$585.00 from the second invoice. I did send the second invoice to them and they told me the accounts had been transferred. It must be that the documents are on the way.

I have been checking on Alice and she has been in good spirits. I will continue to visit until the court relieves me. Please call me if you need me to do anything for Alice. I have yet to see any report from doctors. I will keep you posted.

Thanks, Peter

Peter A. Kouten

Kouten Law Firm, LLC

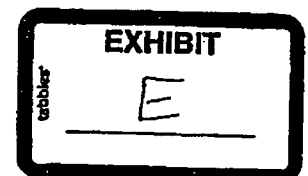
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Subject: RE: Dr Waid's report
From: Peter Kouten (pkouten@gmail.com)
To: lfisher6736@yahoo.com;
Cc: shiplew@jcooper.com;
Date: Friday, January 16, 2009 1:57 PM

Thanks Lisa. I was responding to what the order actually said as I had to re-read it after the Jane incident. Be assured that I will help check on Alice as long as you like. Peter

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road, Suite E

North Charleston, SC 29418

office: 843-767-5284

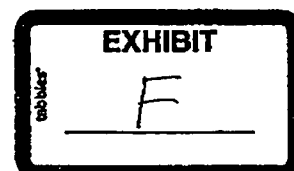
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From: lisa fisher [mailto:lfisher6736@yahoo.com]



Sent: Wednesday, January 14, 2009 4:30 PM
To: pkouten@gmail.com
Cc: john hughes cooper
Subject: Re: Dr Waid's report

Dear Mr. Kouten,

I received and reviewed your letter. Alice has two doctor's appointments on January 26, 2009. I will be traveling to Charleston to help with these appointments.

I will bring to the doctor's attention the report from Dr. Waid, and will attempt to see the appropriateness of an MRI.

I don't recall asking when you would be relieved. I always thought it would be when the status conference was heard. I certainly hope that I did not make it sound like you were not appreciated and my desire was to get you off the case, because I certainly do appreciate all of your work and assistance to my aunt. Further, I am glad that Alice has a trusted person who can visit with her occasionally. I want her to have a full and active life. So Thank you for all of your help.

Sincerely,

Lisa Fisher
(562) 965-3267

— On Wed, 1/14/09, Peter Kouten <pkouten@gmail.com> wrote:

From: Peter Kouten <pkouten@gmail.com>
Subject: Re: Dr Waid's report
To: lfisher6736@yahoo.com, "John Hughes Cooper" <shiplaw@jhcooper.com>
Date: Wednesday, January 14, 2009, 11:35 AM

Lisa and John:

Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Waid sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted.

To answer Lisa's question, it appears that I will continue in my visits until relieved by the Court. That will probably happen during the status conference. If we know a rough timeframe for receipt of reports, I'm sure the status conference date can be set if it is your intention to back off 24 hr care.

Sincerely,

Peter A. Kouten
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
office: 843-767-5284
cell: 843-670-3919

fax: 843-767-5286

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Subject: RE: Alice

From: Peter Kouten (pkouten@gmail.com)

To: lfisher6736@yahoo.com;

Cc: shiplaw@jhcopper.com;

Date: Friday, January 2, 2009 5:52 AM

Thanks Lisa. I have been tracking Jane's phone number this am. I spoke with the court on Wednesday and they suggested mailing her a confirmation of our discussion after we speak. I will make sure she knows:

1. she is no longer appointed in any capacity as it applies to Alice.
2. any contact re: Alice should come through me or John or Lisa

I will discuss these issues with her and follow up with the letter. She must have sent the email because she knows I went to the court. It's good to know that she has the email addresses showing that she could have emailed you in the first instance and not barged into the house. Alice had also mentioned that she had not spoken to Doris since she called the Charleston Police but lately she had been "running into her." I guess this is during her walks. She found it curious and believed it was a fact finding encounter.

Peter A. Kouten

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From: lisa fisher [mailto:lfisher6736@yahoo.com]
Sent: Friday, January 02, 2009 7:37 AM
To: pkouten@gmail.com
Cc: john hughes cooper
Subject: Fw: Alice

Dear Mr. Kouten,

I received this email from Orenstein. I was with Alice all day on New Years. She denies calling Thees. I am concerned about Orenstein's involvement--Thees was their witness, it would seem that she would know. You know more about the procedural issues in the department than I, so I thought I should tell you. I was surprised that I didn't get copies of the inventory, accounting, billings of the other side, etc. I have spoken to Mr. Cooper about getting the documents, and am diligently working on marshalling the assets.

I am taking Alice to a new doctor today. I will let you know how it goes.

Also, I got Alice an air santiizer for her house to get rid of the smoke. It will arrive in about a week.

Thank you for all of your help.

Lisa Fisher

-- On Thu, 1/1/09, guardianjane@bellsouth.net <guardianjane@bellsouth.net> wrote:

From: guardianjane@bellsouth.net <guardianjane@bellsouth.net>
Subject: Alice
To: "shiplaw" <shiplaw@jhcooper.com>, "Ifisher6736" <Ifisher6736@yahoo.com>
Date: Thursday, January 1, 2009, 7:20 AM

I had a call this morning from Doris Thees, Alice 's neighbor, who did not know that I am no longer involved with Alice . She was calling to tell me that Alice called her at 6am today, and she'd appreciate it if someone could put a stop to such calls.

I just think you should know.

HAPPY NEW YEAR!

Jane Orenstein

THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

January 5, 2009

VIA EMAIL (guardianjane@bellsouth.net)

Ms. Jane Ornstein
128 Wainwright Manor
Summerville, SC 29485

Re: Matter of Alice Shaw-Baker
2008-GC-10-0

Dear Ms. Ornstein:

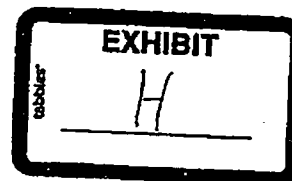
Please accept this letter as a follow-up to our recent conversation regarding Ms. Alice Shaw-Baker. We spoke on January 2 after I had received information from Alice's caregiver that you had presented yourself at Ms. Shaw-Baker's house. There were conflicting facts regarding your visit and the circumstances surrounding the visit. The important outcome is that you are noticed that I am continuing in my duties as Court-Appointed Visitor. Please contact me first with any matters pertaining to Ms. Shaw-Baker.

My cell phone number is 843-670-3919.

Sincerely,

Peter A. Kouten

cc: Lisa Fisher, Esq. VIA EMAIL
John Townsend Cooper, Esq. VIA EMAIL
Mac Gibson, Esq. VIA EMAIL



Subject: Fee statement

From: Peter Kouten (pkouten@gmail.com)

To: lfisher6736@yahoo.com;

Cc: shiplaw@hcooper.com;

Date: Saturday, January 10, 2009 6:22 AM

Ms. Fisher:

First, I want to thank you for the boy's gift certificates. They were appreciative. I am forwarding the Order for fees signed by Judge Curry. I wanted to fax the signed Order but I did not see a fax number on your letterhead. I will follow this email with a hardcopy of the signed Order.

As always, please contact me if you have any questions or need any assistance.

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road , Suite E

North Charleston , SC 29418

office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286



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Re: Matter of Alice Shaw-Baker
Case No.: 2008-GC-10-088
Post-Hearing Court Ordered Visits

December 12, 2008

Alice is well. She continues to smoke but restricts her smoking to the kitchen area and outside. She leaves that house for food shopping/ cigarettes with the caregivers. Usually 5x a week. The POD in the driveway is near empty and it should be returned to the source by the end of the month. The items are being sorted and stored in the rear sheds of closets, etc. Alice has her hair appointment at the house and the hairdresser seems to have become part of the team. She sits with Alice several hours a week. I have received information from Ed Jellison at Family Services, Inc. that Lisa Fisher has been given charge of Alice's finances. There has been no update on the delivery of the pending doctor's reports.

December 22, 2008

Alice had a list of concerns today. She was not in good spirits. She recognizes that she is not in control of her money and she explained that she needs money for food- it is her medicine. Alice treats her diabetes through diet. She stated that Attorney Cooper was to stop by with money but that he had yet to arrive. I later confirmed that Mr. Cooper did bring Alice \$200. The funds are in transition as Lisa Fisher met with Ed Jellison and received Alice's assets last week. Alice seems more and more depressed. Lisa also took Alice to the doctor for further examinations. Reports on those exams and the prior exam are pending. Alice has boxes in the POD but it is almost empty. I am returning to visit Alice tomorrow, at her request, to see if the POD can be returned by the end of the month.

December 23, 2008

Alice was in better spirits today. The POD is being emptied and Alice is storing many items in the rear sheds. It seems that Alice spends a good part of her day on the sofa watching TV. It would seem that she should be getting out more and being exposed to some activity. I expressed this to Attorney Cooper and he will discuss these issues with Lisa Fisher. I asked Alice what she wanted for Christmas and she said cigarettes. She has continued to smoke in the non carpeted areas of the house. She often forgets she is smoking and pulls another cigarette from the pack while holding a lit cigarette. Barbara Anne, her hair dresser has been staying with Alice some, but I am not sure Alice remembers who she is.

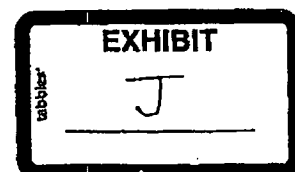
December 24, 2008

Short visit to see Alice and empty POD. Final boxes moved to the shed.

December 29, 2008

Call from Lisa Fisher re: a visit to Alice from Jane Ornstein. Alice was upset by the casual visit and the caregiver was cordial and really didn't know how to react. She should not be visiting as it upsets Alice and she has been removed as temporary guardian. I will seek guidance from the court in this matter.

Visited Alice and talked about Ms. Ornstein. Alice stated that Ms. Ornstein was not there to bring her a gift as she claimed. Alice is doing well and wants to get out of the house more often. Lisa is visiting for New Year's and will take Alice on doctor appointments while she is here.



THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418
TEL: (843) 767-5284
FAX: (843) 767-5286

January 5, 2009

Lisa Fisher, Esquire
PO Box 91112
Long Beach, CA 90809-1112

Re: Matter of Alice Shaw- Baker
Case No.: 2008-GC-10-088

DATE	DESCRIPTION	HOURS	AMOUNT
12/12/08	Court Ordered weekly visit per Judge Curry NOTE: all visit summaries are attached and Incorporated by reference	1.1	165.00
12/22/08	weekly visit Ms. Baker	1.4	210.00
12/23/08	weekly visit Ms. Baker	.7	105.00
12/24/08	visit w/ Alice to empty POD	.3	45.00
12/29/08	TC Lisa Fisher re: visit from Jane Ornsteen to Alice Discuss options and solutions for Alice getting Out of house, doctor's reports, notice to Ct re: Jane Visit w/ Alice re: Jane's visit and Lisa coming	.4 .7	60.00 105.00
SUBTOTAL FOR DECEMBER SERVICES			\$690.00
SUBTOTAL FOR NOVEMBER INVOICE THROUGH Dec 3, 2008			\$585.00
TOTAL DUE			<u>\$1275.00</u>



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ELISABETH SPENCER,)
)
Petitioner,)
)
vs.)
)
ALICE SHAW-BAKER, an alleged)
Incapacitated person, and)
LISA FISHER, her next of kin,)
)
Respondents.)
_____)

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO: 2008-GC-10-088

**ORDER GRANTING FEES
BY COURT-APPOINTED
GUARDIAN AD LITEM FOR
ALICE SHAW-BAKER
(DECEMBER 12 - DECEMBER 29, 2008)**

This Court, with the Honorable Judge Tamara C. Curry presiding on October 29, 2008, heard arguments regarding the Appointment of a Guardian and Conservator for Ms. Alice Shaw-Baker. Pursuant to the Guardian and Conservator Appointment Orders for Ms. Shaw-Baker, Respondent, Lisa Fisher, has assumed the duties as permanent Guardian and Conservator for Ms. Shaw-Baker.

The Court further ordered that "until receipt of the neuropsychological and medical reports, the Guardian ad Litem Peter A. Kouten shall visit Alice Shaw-Baker on a weekly basis and shall submit to this Court a brief written report on the condition of Alice Shaw-Baker on a monthly basis."

The Guardian ad litem Peter A. Kouten submits the monthly report for the time period December 1 through December 31, 2008 as Exhibit A to this report, now incorporated by reference. The Court further Ordered that the GAL submit monthly fee requests to the Court for approval.

FINDINGS OF FACT

After reviewing the Guardian *ad litem*'s itemized bill, I find that the professional fees requested by the GAL, Peter A. Kouten, Esquire, for the services rendered to Ms. Shaw-Baker and for disbursements during the above referenced dates in the amount of



Six Hundred and Ninety dollars and 00/100 (\$690.00) are appropriate, fair and reasonable. Mr. Kouten is a member in good standing of the South Carolina and Charleston County Bar Associations who regularly appears before this Court. I find that the GAL's hourly rate of \$150.00 in this matter is fair and reasonable in light of his experience and training, and is within the prevailing rates of attorneys and GAL's of similar experience and training. I find that his services have been of benefit to Ms. Shaw-Baker and the other parties in this matter.

Based on the above, it is therefore

ORDERED, ADJUDGED AND DECREED that the Conservator pays to the court appointed attorney and Guardian *ad litem* professional fees in the amount of Six Hundred and Ninety dollars and 00/100 (\$690.00) for his services rendered and disbursements during the above referenced dates; and it is further,

ORDERED, ADJUDGED AND DECREED that Attorney Kouten submit future periodic bills for his continued services as attorney and Guardian *ad litem* for Ms. Alice Shaw-Baker, including visits and reports to the Court, until such time as this Court deems that his services are no longer necessary in reference to the case at bar.

IT IS SO ORDERED.

Honorable Tamara C. Curry
Associate Judge of Probate
County of Charleston

This ____ day of January, 2009
Charleston, South Carolina

Subject: Re: Dr Waid's report
From: Peter Kouten (pkouten@gmail.com)
To: Ifisher6736@yahoo.com; shiplaw@jccooper.com;
Date: Wednesday, January 14, 2009 11:35 AM

Lisa and John:

Please find attached visitor's letter to the Court concerning Dr Waid's evaluation. It seems that the next step in satisfying the Court Order is to receive and forward the "medical evaluation by a medical doctor." Further, Dr. Waid sought an evaluation from a "Geriatric Psychologist." This appointment should be set and final evaluation and report should be forwarded to the Court. When these items are complete, it appears that the Court would like to set a status conference to determine the procedure to back off of 24 hour care if warranted.

To answer Lisa's question, it appears that I will continue in my visits until relieved by the Court. That will probably happen during the status conference. If we know a rough timeframe for receipt of reports, I'm sure the status conference date can be set if it is your intention to back off 24 hr care.

Sincerely,

Peter A. Kouten

Kouten Law Firm, LLC

7013 Dorchester Road , Suite E

North Charleston , SC 29418

office: 843-767-5284

cell: 843-670-3919

fax: 843-767-5286



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THE KOUTEN LAW FIRM, LLC

7013 DORCHESTER ROAD, SUITE E
NORTH CHARLESTON, SOUTH CAROLINA 29418

TEL: (843) 767-5284

FAX: (843) 767-5286

January 14, 2009

Elizabeth Sykes
Charleston County Probate Court
100 Broad Street, Ste 469
Charleston, SC 29401

Re: Matter of Alice Shaw- Baker
Case No.: 2008-GC-10-088

Dear Ms. Sykes:

As a condition of the Court's Guardianship and Conservatorship Appointment Order for Ms. Alice Shaw-Baker dated 11/19/08, I was to "visit Alice Shaw-Baker on a weekly basis" until receipt of reports from neuropsychological and medical evaluations. The neuropsychological evaluation was purposed by Dr. Waid per Court Order.

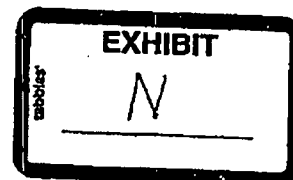
The Order sought to clarify whether Ms. Shaw-Baker:

1. has dementia and, if so, can it be addressed with medication;
2. could competently and safely drive an auto;
3. requires 24 hour care and, if not, a recommendation of appropriate care levels and a proper procedure to determine the same.

It is Dr. Waid's medical opinion that Alice has "definitive neurocognitive impairment" which gives rise to "a dementia." Dr. Waid is unsure whether the difficulty is associated with her diet/ diabetes. He does recommend she be assessed by a geriatric psychiatrist to determine if she can profit from diabetes medications. He also suggests an MRI to help determine the "causal factors of her neurocognitive decline."

Dr. Waid does not believe Alice should drive in her current state, however, her condition may improve from the above course of action.

Dr. Waid is of the belief that Alice can have less than 24 hour supervision and suggests a minimum of 12 hours daily between the hours of 8 am and 8 pm to include the preparation of all her meals. Dr. Waid suggests continued monitoring may alter Alice's need for care. She may need less if she responds to diabetes medications if they are necessary based on the evaluation.



Additionally, Dr. Waid suggests Alice maintain primary care on a regular basis concerning her diabetes, hypertension, cholesterol, and other medical conditions.

If you have any questions, please contact my office.

Sincerely,

Peter A. Kouten
Kouten Law Firm, LLC

cc: Lisa Fisher
John Hughes Cooper

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT

CASE NUMBER: 2009-ES-10- 318
09 MAR 10 AM 9:30

APPLICATION FOR

INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

PETITION FOR

FORMAL

☐ TESTACY
☒ APPOINTMENT

Applicant/Petitioner: Bessie Wyndham Huckabee
Address: 5318 McRoy St, North Charleston, SC 29418
Telephone: cell 709-6860

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Nominated Personal Representative for Decedent's Will

2. Decedent Information

Name: Alice Shaw-Baker
Social Security Number: 562-32-8423
Date of Birth: August 14, 1928
Date of Death: February 25, 2009
Age at date of death: 79
Domicile at date of death: CHARLESTON SC
(county) (state)

3. Venue for this proceeding is proper in this county because:

- ☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

- 4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Bessie Huckabee	not a minor	5318 McRoy St, N Chas, SC 29418	friend
Sandra Byrd	not a minor	Goose Creek, SC	friend
Key Passaluniguo	not a minor	Charleston, SC	friend

(use additional sheet if necessary)

FORM 6300 (2/2004)
62-3-263, 62-3-301, 62-3-303, 62-3-401, 62-3-402, 62-3-409
62-3-414, 62-3-631, 62-3-704, 64-23-1090, 44-23-1120

EXHIBIT

tabbier

Page 1 of 6

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Betty Fisher	not a minor	PO Box 91112, Long Beach, CA 90809	niece
Lisa Fisher	not a minor	PO Box 91112, Long Beach, CA 90809	grand niece

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
☒ NO ☐ YES If yes, please explain on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
☒ NO ☐ YES If yes, please explain on page 3.
7. Has a guardian or conservator ever been appointed for this person?
☐ NO ☒ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
☒ NO ☐ YES If yes, please state details, including names and addresses of such Personal Representative, on page 3.
10. Have more than ten years passed since the decedent's death?
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of 100 and real estate of about the value of 100. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section 11.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☒ The original is attached
☐ The original is in the Court's possession
☐ An authenticated copy of a will probated in another jurisdiction is attached
☐ An authenticated copy of a will not probated in another jurisdiction is attached
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☒ YES ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: May 21, 2001

codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

- ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

Section I, Part 7- Lisa Fisher was appointed guardian and conservator for Ms. Shaw-Baker by Order of CC Probate Court on Nove
Section I, Part - This court has appointed Lisa Fisher based on her presentation of an alleged Last Will and Testament presents
is dated _____

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Bessie Wyndham Huckabee, 5319 McRoy St, North Charleston, SC 29418

2. Priority for this appointment is:

- ☒ named as Primary Personal Representative in will or nominee of Primary Personal Representative
☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
☐ named as nominee of Primary and/or Alternate Personal Representative
☐ other devise of decedent, or nominee (describe): _____ or nominee of said devise
☐ surviving spouse of decedent, or nominee of said spouse
☐ other heir of decedent (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
☐ nominee of any of the above

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

none

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 2nd day of April, 2018

Notary Public for South Carolina
My Commission Expires: 11/15/2018

Signature: Bessie Huckabee
Name: Bessie Huckabee
Address: 5319 McRoy St, North Charleston, SC
29418
E-mail: _____
Telephone (O): _____
(H): 843-562-2098

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally this 11th day of April, 2018

Samuel L. Curry
Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20____

Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, be admitted formally to probate.

Executed this _____ day of _____, 20____

Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this _____ day of _____, 20____

Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Bessie Huckabee
Name: _____
Address: _____

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

Signature: _____
Name: _____
Address: _____

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

Attorney: _____
Address: _____

E-mail: _____
Telephone (O): _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF ALICE SHAW-BAKER

CASE NUMBER 2009ES10-60378

FIDUCIARY LETTERS

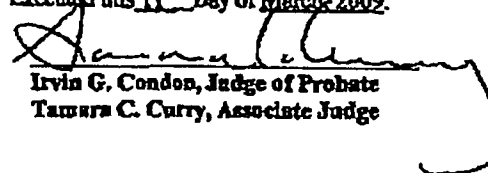
☒ Personal Representative
☐ Conservatorship
☐ Trusteeship

On the 11TH day of March, 2009, BESSIE WYNNDHAM HUCKABEE was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment qualification, and authority of the above fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS: None

Executed this 11TH Day of March, 2009.


Irvin G. Condon, Judge of Probate
TAMARA C. CURRY, Associate Judge

FORM #146PC (1/91)
62-7-103, 62-5-304, 62-5-421, 62-70-201

6

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT
PROOF OF DELIVERY

CASE NUMBER: 2009-ES-10-0378

On the MARCH day of 12, 2009, I mailed or delivered the following document, INFORMATION TO HEIRS
AND/OR DEVISEES

- ☒ 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
☐ certified mail
☒ ordinary first class mail
☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
BLANK	BLANK
Bessie Huckabee	5319 McRoy Street, North Charleston, SC 29418
Sandra Byrd	254 Jean Wells Drive, Goose Creek, SC 29445
Kay Passafiume	4448 Paramount Drive, North Charleston, SC 29405
Lisa Fisher, Esquire	PO Box 81112, Long Beach, CA 90809-1112

SWORN to before me this 12th day of
March, 2009

Peter A. Kouten
Notary Public for South Carolina
My Commission Expires: 7/24/2013

Signature: [Signature]
Name: PETER A. KOUTEN, ESQ
Address: 7013 DORCHESTER RD, STE E
N CHAS, SC 29418
Telephone (O): 787-5284
(H):
E-mail: PKOUTEN@GMAIL.COM

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____
E-mail: _____

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON
IN THE MATTER OF: ALICE SHAW-BAKER

IN THE PROBATE COURT
INFORMATION TO HEIRS AND DEVISEES

CASE NUMBER: 2009-ES-10-0378

On MARCH 10, 2009, Application/Petition was made to the Probate Court of CHARLESTON County, at (address),
84 BROAD STREET, CHARLESTON, SC 29401, for the (check all that apply):

INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

FORMAL

☐ TESTACY
☐ APPOINTMENT

In the above matter,

(Complete is applicable) The decedent's will dated MAY 21, 2001, and codicil(s) dated N/A, was/were presented.

This notice is being sent to persons who have or may have some interest in the estate.

Bond HAS ☐ HAS NOT ☒ been filed.

My application/petition was granted within the past thirty days on MARCH 10, 2009.

Disclaimer: This form is required to be sent to all potential heirs of the deceased. Receipt of this form does not mean that you will inherit from the deceased. You may review the file in the Probate Court or see an attorney if you desire further information.

Applicant / Personal Representative Name: BESSIE HUCKABEE
Address: 5319 McRoy Street
North Charleston, SC 29418
Telephone (O):
(H): 843-552-2086

Applicant / Personal Representative Name:
Address:
Telephone (O):
(H):

Attorney: PETER A. KOUTEN
Address: 7013 DORCHESTER RD, STE E
NORTH CHARLESTON, SC 29418
Telephone: 843-767-5284

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-3010

BETTY FISHER, etal.,)
Plaintiffs,)

v.)

BESSIE HUCKABEE, etal.,)
Defendants.)

In the Matter of the Estate of)
Alice Shaw-Baker.)
Charleston County Probate No.:)
2009-ES-10-0378)

ANSWER OF DEFENDANTS

**BESSIE HUCKABEE, KAY PASSAILAIGUE
AND SANDRA BYRD
(Jury Trial Demanded)**

Defendants Bessie Huckabee, Kay Passailaigue and Sandra Byrd answer the complaint of
the Plaintiffs as follows:

**FOR A FIRST DEFENSE
(General Denial)**

1. Defendants admit the allegations of Paragraph 1.
2. Defendants admit the allegations of Paragraph 2 upon information and belief.
3. Defendants admit the allegations of Paragraph 3 upon information and belief
excepting the allegation that Lisa Fisher is currently the Conservator of Alice
Shaw-Baker.
4. Defendants admit the allegations of Paragraph 4.
5. Defendants admit the allegations of Paragraph 5 to the extent that Kay
Passailaigue ("Kay") is a devisee under the May 21, 2001 submitted to the
Probate Court by attorney for Plaintiff and that she is the sole beneficiary of the
National Life Insurance policy and that she is a resident of Charleston County.



Defendants lack sufficient information to affirm or deny the remaining allegations of Paragraph 5.

6. Defendants admit the allegations of Paragraph 6.
7. Defendants deny the allegations in Paragraph 7.
8. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 8 regarding the State Budget and Control Board and the South Carolina Retirement System and therefore deny those allegations and demand strict proof thereof.
9. On information and belief, Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 9 regarding ING and the South Carolina Deferred Compensation Program and therefore deny those allegations and demand strict proof thereof.
10. Defendants admit the allegations of Paragraph 10 to the extent that Kay is the sole beneficiary of the National Life Insurance policy and deny the remaining allegations of Paragraph 10 and demand strict proof thereof.
11. Defendants admit the allegations of Paragraph 11.
12. Defendants admit the allegations of Paragraph 12.
13. Defendants admit the allegations of Paragraph 13.
14. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 14.
15. Defendants admit the allegations of Paragraph 15.
16. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 16.

17. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 17.
18. Defendants admit the allegations of Paragraph 18.
19. Defendants admit the allegations of Paragraph 19.
20. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 20.
21. Defendants admit the allegations of Paragraph 21.
22. Defendants admit the allegations of Paragraph 22 to the extent that Alice Shaw-Baker ("Alice") owned at least three Chihuahuas that she cared for and loved and deny the remaining allegations of Paragraph 22 and demand strict proof thereof.
23. Defendants deny that all of Alice's home decor "featured" Chihuahua themes.
24. Defendants deny the allegations of Paragraph 24 and demand strict proof thereof.
25. Defendants admit the allegations of Paragraph 25.
26. Defendants admit the allegations of Paragraph 26.
27. Defendants admit the allegations of Paragraph 27.
28. Defendants admit the allegations of Paragraph 28.
29. Defendants admit the allegations of Paragraph 29.
30. Defendants admit the allegations of Paragraph 30.
31. Defendants admit the allegations of Paragraph 31.
32. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 32 and therefore deny the allegations and demand strict proof thereof.

33. Defendants are currently without sufficient information as to the truth or falsity of the allegations of Paragraph 33 and therefore deny the allegations and demand strict proof thereof.
34. Defendants admit the allegations of Paragraph 34.
35. Defendants admit the allegations of Paragraph 35.
36. Defendants admit the allegations of Paragraph 36 to the extent that Alice executed the Durable Power of Attorney but deny knowledge of the existence of said document and therefore deny the existence of a fiduciary relationship as would exist had Bessie known and accepted the powers and duties of a Durable Power of Attorney.
37. Defendants admit the allegations of Paragraph 37.
38. Defendants admit the allegations of Paragraph 38, to the extent that the Health Care Power of Attorney provided for such in the event that Alice was incapable of acting for herself, an eventuality that never occurred prior to the Court's revocation of said Health Care Power of Attorney.
39. Defendants admit that Alice placed trust and confidence in Bessie and Kay as friends and deny the remaining allegations of Paragraph 39 and demand strict proof thereof.
40. Defendants deny the allegations of Paragraph 40 and demand strict proof thereof.
41. Defendants deny the allegations of Paragraph 41 and demand strict proof thereof.
42. Defendants deny the allegations of Paragraph 42 and demand strict proof thereof.
43. Defendants deny the allegations of Paragraph 43 and demand strict proof thereof.
44. Defendants deny the allegations of Paragraph 44 and demand strict proof thereof.

45. Defendants deny the allegations of Paragraph 45 and demand strict proof thereof.
46. Defendants deny the allegations of Paragraph 46 and demand strict proof thereof.
47. Although Kay is the sole beneficiary of Alice's life insurance, Defendants deny the allegations of Paragraph 47 and demand strict proof thereof.
48. Defendants deny the allegations of Paragraph 48 and demand strict proof thereof.
49. Defendants deny the allegations of Paragraph 49 and demand strict proof thereof.
50. Defendants deny the allegations of Paragraph 50 and demand strict proof thereof.
51. Defendants admit the allegations of Paragraph 51 and that the Petition was resultant from repeated telephone calls regarding Alice, including calls and conversations with Bessie and Kay.
52. Defendants admit the allegations of Paragraph 52.
53. Defendants admit the allegations of Paragraph 53.
54. Upon information and belief, Defendants admit the allegations of Paragraph 54.
55. Defendants deny the allegations of Paragraph 55 that representations were made to induce Alice and that Alice was incapacitated at the timeframe referenced and demand strict proof thereof.
56. Defendants deny the allegations of Paragraph 5 that Plaintiffs Betty Fisher and Lisa Fisher assisted Alice and demand strict proof thereof.
57. Defendants deny the allegations of Paragraph 57 and demand strict proof thereof.
58. Defendants deny the allegations of Paragraph 58 and demand strict proof thereof.
59. Defendants deny the allegations of Paragraph 59 and demand strict proof thereof.
60. Defendants admit the allegations of Paragraph 60.
61. Defendants admit the allegations of Paragraph 61.

62. Defendants admit the allegations of Paragraph 62 to the extent the Lisa Fisher did her duties, for the most part, through agents while she was in California and that attorney John Cooper assisted in the performance of the allegations aforementioned.
63. Defendants deny the allegations of Paragraph 63 and demand strict proof thereof.
64. Defendants admit the allegations of Paragraph 64.
65. Defendants admit the allegations of Paragraph 65.
66. Defendants deny the allegations of Paragraph 66 to the extent that the Court Order states that "Alice Shaw-Baker nor anyone on her behalf may revise or revoke her will" unless specifically ordered by the Court.
67. Defendants deny the allegations of Paragraph 67 and demand strict proof thereof.
68. Defendants deny the allegations of Paragraph 68 and demand strict proof of the existence of a subsequent will.
69. Defendants deny the allegations of Paragraph 69 and demand strict proof thereof.
70. Defendants admit the allegations of Paragraph 70.
71. Defendants admit the allegations of Paragraph 71.
72. Defendants deny the allegations of Paragraph 72 and demand strict proof thereof.
73. Defendants deny the allegations of Paragraph 73 and demand strict proof thereof.
74. Defendants deny the allegations of Paragraph 74 and demand strict proof thereof.
75. Defendants deny the allegations of Paragraph 75 and demand strict proof thereof.
76. Defendants deny the allegations of Paragraph 76 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIRST CAUSE OF ACTION
(Constructive Trust)
(Denial)**

77. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim .

78. Defendants admit the allegations of Paragraph 78 to the extent the Lisa Fisher holds the estate assets. She has been removed as Conservator of Alice's estate by Court Order.

79. Defendants admit the allegations of Paragraph 79.

80. Defendants admit the allegations of Paragraph 80.

81. Defendants deny the allegations of Paragraph 81 and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SECOND CAUSE OF ACTION
(Declaratory Judgment Regarding Revocation)
(Denial)**

82. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim

83. Answering Paragraphs 83, 84, 85, and 86 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S THIRD CAUSE OF ACTION
(Undue Influence)
(Denial)**

84. Answering Paragraph 87, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim

85. Answering Paragraphs 88, 89, 90, 91, 92, 93, 94 and 95 Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FOURTH CAUSE OF ACTION
(Fraud)
(Denial)**

86. Answering Paragraph 96, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
87. Answering Paragraphs 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S FIFTH CAUSE OF ACTION
(Declaratory Judgment Regarding Improper Execution)
(Denial)**

88. Answering Paragraph 114, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
89. Answering Paragraphs 115, 116, and 117, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SIXTH CAUSE OF ACTION
(Declaratory Judgment Regarding Subsequent Will)
(Denial)**

90. Answering Paragraph 118, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
91. Answering Paragraphs 119, and 120, Defendant's deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Unjust Enrichment)
(Denial)**

92. Answering Paragraph 121, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
93. Answering Paragraphs 122, 123, 124, 125, 126 and 127, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S EIGHTH CAUSE OF ACTION
(Promissory Estoppel)
(Denial)**

94. Answering Paragraph 128, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
95. Answering Paragraphs 129, 130, 131, 132, and 133, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S NINTH CAUSE OF ACTION
(Petition for Removal of Bessie as Personal Representative)
(Denial)**

96. Answering Paragraph 134, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim
97. Answering Paragraphs 135, 136, 137, 138, 139, 140, and 141, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S TENTH CAUSE OF ACTION
(Petition for Appointment of Betty Fisher as Personal Representative)**

(Denial)

98. Answering Paragraph 142, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

99. Defendants admit the allegations of Paragraph 143.

100. Answering Paragraph 144, Defendants deny and demand strict proof thereof.

**FOR A FIRST DEFENSE TO
PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Attorneys' Fees and Costs)
(Denial)**

101. Answering Paragraph 145, each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

102. Answering Paragraph 146, Defendant's deny and demand strict proof thereof.

**FOR A SECOND DEFENSE TO
ALL CAUSES OF ACTION**

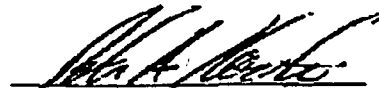
103. Each and every of these Defendant's answers are incorporated herein to the same extent as if set forth verbatim.

104. Plaintiff's Complaint should be dismissed for failure to state claims with sufficient facts to constitute causes of actions against Defendants pursuant to Rule 12(B)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendants Bessie Huckabee, Kay Passailaigue and Sandra Byrd pray that

- a. the Complaint of the Plaintiffs be dismissed with costs;

- b. that the Defendants seek a jury trial in the event the actions are not dismissed; and
- c. any such other relief as the Court may deem just and proper.



Peter A. Kouten, Esquire
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
843-767-5284

Attorney for Defendants
Bessie Huckabee, Kay Passailaigue
And Sandra Byrd

May 25, 2009
Charleston, S.C.

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2009 the foregoing Answer were served on the following by U. S. mail with sufficient postage affixed:

John Hughes Cooper, Esquire
1808 Middle Street
Sullivan's Island, SC 29482
Attorney for Plaintiffs

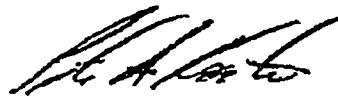
Hon. David K. Avant
Managing Legal Counsel
State Budget and Control Board
P.O. Box 11960
Columbia, SC 29211-1960

B. Allen Bullard, Esquire
Montgomery Willard, LLC
P.O. Box 11886
Columbia, S.C. 29211

South Carolina Deferred Compensation Program
P.O. Box 5182
Boston, MA 02206

National Life Insurance Company
One National Life Drive
Montpelier, VT 05604

Hon. Henry McMaster
Attorney General
P. O. Box 11549
Columbia, SC 29211



Peter A. Kouten, Esquire
Kouten Law Firm, LLC
7013 Dorchester Road, Suite E
North Charleston, SC 29418
Attorney for Defendants

12-CR10-1332

FILED
2012 NOV 26 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AFFIDAVIT OF MARK W. HARDEE

PERSONALLY APPEARED before me Mark W. Hardee, who being first duly sworn,
stated as follows:

1. I am over the age of eighteen and of sound mind.
2. I have personal knowledge of the matters set forth herein and if called and sworn to testify, I could and would competently do so.
3. This affidavit satisfied the requirements under S.C. Code § 15-36-100 which outlines "...at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit."
4. I have familiarized myself with the facts which are set forth in the complaint.
5. As set forth herein, it is my expert opinion, held to a reasonable degree of professional certainty, that the facts alleged in this matter set forth demonstrate that Attorney Peter Kouten's conduct fell below the standard of care applicable to South Carolina lawyers. Under South Carolina law, "standard of care" means the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession in this State. (See *Holy Loch Distribs.*, 340 S.C. 20, 26, 531 S.E. 2d 282, 285 (2000).) As more fully set forth below, Attorney Kouten engaged in negligent, reckless or intentional acts and omissions under state law in his dealings with Alice Shaw Baker.

6. **EXPERTISE AND BACKGROUND:** As a preliminary matter, I have the following experience:

I graduated from the University Of South Carolina School Of Law in 1986. I then went to work for the Richland County Public Defenders Office as an Assistant Public Defender for _____

EXHIBIT
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Q
164

approximately two years. In the latter part of 1988, I went to work with the law firm of Lewis, Babcock, Pleicones & Hawkins located in Columbia, SC. While working with this firm, I was actively engaged in representing clients in complex litigation matters, including litigation involving property disputes, legal malpractice matters, and representing attorneys and members of the judiciary in ethics matters. I eventually became a partner with the firm and after approximately 13 years I left and started my own firm, The Hardee Law Firm. (Curriculum Vitae is attached)

7. I have continued handling various complex litigation matters including, property disputes, legal ethics and legal malpractice actions. I am familiar with lawyer disciplinary proceedings, having participated in the litigation of discipline cases as a defense lawyer, and as special disciplinary council. I have served as litigation consultant or as a testifying expert in legal malpractice cases, and have spoken at continuing legal education seminars on the issue of lawyer's ethics.

8. **DOCUMENTS REVIEWED:** The documentary evidence I have reviewed supports the allegations of the Complaint. This evidence includes the kinds of factual sources customarily relied upon by experts in this field, such as:

- a. Verified Complaint of Plaintiff Betty Fisher, as Real Representative for Alice Shaw Baker;
- b. Visitor's Report of Defendant Kouten dated October 9, 2008 in Probate Court, Case no. 2008-GC-10-088;
- c. Post Hearing Court Ordered Visits beginning November 7, 2008 to December 1, 2008; including draft order, in the *Matter of Alice Shaw-Baker, Case no. 2008-GC-10-088;*

- d. December 3, 2008 billing from The Kouten Law Firm, LLC, to Lisa Fisher in the *Matter of Alice Shaw-Baker, Case no. 2008-GC-10-088*;
- e. Order granting Fees to Appointed Attorney Guardian ad litem filed the *Matter of Alice Shaw-Baker, Case no. 2008-GC-10-088* dated November 12, 2008;
- f. Email to John Hughes Cooper dated December 23, 2008 from Defendant Kouten;
- g. Email to Lisa Fisher dated December 18, 2008 from Defendant Kouten;
- h. Email to Lisa Fisher and John Hughes Cooper dated January 16, 2009 from Defendant Kouten;
- i. Email from Lisa Fisher to Defendant Kouten dated January 14, 2009;
- j. Email from Peter Kouten to Lisa Fisher and John Hughes Cooper dated January 2, 2009;
- k. Email to Peter Kouten from Lisa Fisher dated January 2, 2009;
- l. Letter from Peter Kouten to Jane Orenstein dated January 5, 2009;
- m. Email from Peter Kouten to Lisa Fisher dated January 10, 2009;
- n. Post hearing Court ordered visits dated from December 12, 2008 from December 29, 2008 from Peter Kouten;
- o. Billing from The Kouten Law Firm to Lisa Fisher dated January 5, 2009;
- p. Draft Order Granting Fees by Court Appointed Guardian ad Litem for Alice Shaw-Baker dated December 12-December 29, 2008;
- q. Email from Peter Kouten to Lisa Fisher and John Hughes Cooper dated January 14, 2009;
- r. Letter from Peter Kouten to Elizabeth Sykes of the Charleston County Probate Court dated January 14, 2009 re: Dr. Waid's report;

- s. Petition for Informal Probate of Will and appointment dated March 10, 2009,
Probate Court, Case no. 2009-ES-10-378;
- t. Fiduciary Letters, Personal Representative naming Bessie Huckabee, for Case no.
2009-ES10-00378, dated March 11, 2009;
- u. Answer of Defendants Bessie Huckabee; Kay Passailaigue Slade; Sandra Byrd in
Will Contest matter, Case no. 2009-CP-10-3010;
- v. Order from Appellate Court
- w. Affidavit of Candace Rickborn;

9. **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT:** I have been asked to opine on the standard of care in a case involving a court appointed attorney for Alice Shaw Baker. From the facts set forth in the documents reviewed, and my knowledge of the Rules of Professional conduct, I can state to a reasonable degree of certainty that Attorney Peter Kouten's representation of Ms. Shaw Baker was **below the standard of care.**
10. Defendant Kouten was appointed Guardian ad litem and Visitor for the decedent Alice Shaw-Baker. Law governing an guardian ad litem conclude that when a court appoints an attorney to represent a ward in a proceeding, he is duty bound to protect the interests of the his ward. (see also *Stefan v. Stefan*, 320 S.C. 419, 465 S.E.2d 734 (Ct. App. 1995). Further, A guardian ad litem is a representative of the court, **appointed to assist it in properly protecting the interests of an incompetent person.** (*Shainwald v. Shainwald*, 302 S.C. 453, 395 S.E.2d 441 (Ct. App. 1990), emphasis added.) Under the principles of *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996), principles governing conflict of interest apply to guardian ad litem. Moreover, the court in

Fleming v. Asbill, 42 F.3d 886 (4th Cir. 1994) (applying South Carolina law), held that a cause of action for malpractice negligence may be asserted against a guardian ad litem.

There, the court, relying on *Simpson v. Doggett*, 159 S.C. 294, 156 S.E.771 (1930), stated that South Carolina common law makes it clear that a guardian ad litem is liable to his ward for the negligent performance of his duties. Moreover, S.C. Code Ann. § 20-7-127 provides that a lay guardian ad litem may be held answerable to his ward for gross negligence. The same rationale applies to an attorney acting as a guardian ad litem. This relationship created professional, ethical and fiduciary duties that Defendant Kouten was bound to perform.

11. The relationship was a continuing relationship as demonstrated by other documents filed with the court, and collateral documents wherein he admitted that he was acting on behalf of Alice Shaw Baker. For instance, On October 20, 2008, he filed a visitor's report. He visited Ms. Shaw-Baker weekly. He filed reports with the court. He also admitted in documents that he spoke to the Probate Court without the presence of the conservator/guardian's attorney being present. (See January 2, 2009 email)
12. Defendant Kouten violated his duties to Alice Shaw Baker in numerous ways, including:
 - a. by failing to provide Ms. Shaw Baker with competent advice and representation and ordinary care, Ms. Shaw Baker's interests were not protected, including that:
 - b. by failing to investigate the prior actions of Bessie Huckabee, Kay Passailaigue Slade, and Sandra Byrd ("other defendants") to determine whether or not they in fact had an established animal charity as they had represented to Ms. Shaw Baker;
 - c. by failing to inform the Court that Ms. Shaw Baker had revoked her prior Will upon discovery that the "other defendants" did not have an established animal charity;

- d. by having ex-parte communications with the Probate Court without the presence of the conservator/guardian's attorney presence;
- e by using information obtained from the investigation of the conservatorship/guardianship proceeding to advance the other defendants' positions, contrary to Ms. Shaw Baker's known position concerning animal charities;¹
- f. by communicating and taking this adverse position against Ms. Shaw-Baker and her desired Estate plan, Defendant Kouten took a position that was detrimental to Ms. Shaw Baker;
- g. Defendant Kouten's actions undermined the trust and confidence necessary to Ms. Shaw-Baker and led to adverse proceedings which have caused harm to her, her property and estate;
- h. by representing the other beneficiaries when he knew or through the use of legal knowledge, skill, thoroughness, and preparation should have known that his representation of these other beneficiaries was burdened by a nonconsentable concurrent conflict of interest (See Rule 407, SCACR, Rule 1.7, Comment 1; Rule 1.9);²

¹ S.C. Rules Prof. Conduct, rule 3.7 [A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness...]; see also S.C. Bar Eth. Adv. Op. 91-26 [where an attorney was both guardian ad litem and advocate in a potential involuntary commitment proceeding, that attorney may not act as witness and advocate (citing Rule 3.7 of the Rules of Professional Conduct)]; and see Rule 1.6.390 [confidential communications].

² South Carolina Ethical Opinion 94-14 (1994) explains the relationship in cases of "conflict of interest" in conservatorship and estate proceedings. In said case, the attorney represented the grandmother as personal representative of the estate of her son and as conservator of her grandson. A

i. Due to Ms. Shaw Baker's stated illness, Defendant Kouten knew that she could not make informed decisions concerning any representation of the other beneficiaries;

j. Also, Defendant Kouten knew that his actions were inexplicably interfering with the role of the conservator/guardian by speaking to the Hospital concerning the care and treatment of Ms. Shaw Baker;

k. Further evidence that he knew that his actions were harmful to Ms. Shaw Baker and her estate are demonstrated in his post death action, wherein he asked one of the caregivers to deceive the conservator/guardian of his surreptitious attempts to obtain documents of Alice Shaw-Baker and had ex-parte communications with the court involved in the will contest action;

l. While engaged in the practice of law on behalf of the other defendants, in obvious conflict with his prior ward, he wrongfully participated in and handled transactions for these other defendants with knowledge that Ms. Shaw-Baker intended for her real property to benefit animal charities.

m. The admissions made to Ms. Fisher by Attorney Kouten that he had spoken to these Beneficiaries prior to the death of Ms. Shaw Baker and within 30 minutes of her death already had set up the probate administration appointment support the conclusion that he had began representing them prior to the death of Ms. ~~Smith~~ *Shaw Baker*.

conflict of interest arose with regard to life insurance proceeds. The conflict of interest between the grandmother and grandson required the attorney to withdraw from representation of the grandmother and also would prohibit the attorney from assuming representation of the grandson without the grandmother's consent.

n. The disclosure of Alice Shaw Baker's personal and private information to the Court, the caregivers, neighbors, and these purported beneficiaries without the presence of Ms. Fisher's counsel and/or consent of Ms. Fisher (conservator/guardian) interfered with Ms. Fisher's powers and her ability to ensure that Ms. Shaw Baker was receiving proper care. It also constituted ex parte communication in violation of the rules of professional conduct.

o. Also, he has taken adverse positions against Alice Shaw Baker, by representing the purported beneficiaries. Alice Shaw Baker's estate was to benefit animal charities. He knew or should have known that Ms. Shaw Baker had revoked the Will naming the purported beneficiaries upon learning that Beneficiary Slade did not own/run an animal charity. He knew or should have known that even under the (now revoked) Will, that Ms. Shaw Baker had always intended that her Estate was intended for Animal Charities.

p. He knew that the purported beneficiaries had also breached their duty to Alice Shaw Baker and promise to assist her in her old age.

q. He knew that Ms. Fisher, as guardian/conservator, came regularly to Charleston, SC to aid her great aunt and had sole authority to make decisions about her care and treatment. Therefore, his actions in interfering with her duties was improper.

r. Attorney Kouten knew that he had a duty to provide Ms. Shaw Baker with advice and to inform the court that the purported Will was contrary to Ms. Shaw Baker's wishes and the result of undue influence. He owed a duty of loyalty and to avoid actual and/or potential conflicts of interests and failed in performing for the benefit. (See. S.C. Rules 1.3, 1.6, 1.7, 1.8, 1.9, 1.14, 1.16, 3.3; 3.4, 3.5.)

s. Because of the known conflicts, he was mandated to decline services to the other defendants;

t. Defendant Kouten failed to obtain, and could not obtain, consent from Ms. Shaw Baker to represent the adverse interests of the other defendants (See South Carolina Rules of Professional Conduct, Rule 1.7; See also Townsend v. Townsend, 323 S.C. 309 (1996)[Former wards of attorney guardians ad litem are protected from conflicts in subsequent litigation pursuant to 1.7 and 1.9 of Rule 407, SCACR]);

u. Thereafter, he continued to represent the other defendants after Ms. Shaw Baker's death, by directed the purported Executor to take control of the real and personal property of Ms. Shaw Baker, within 30 minutes of her death;

v. Moreover, even after receiving an order on June 8, 2009 to get a bond from the court in the Will contest matter, Attorney Kouten knew that his clients were in possession of in excess of \$16,000.00 that he had not inventoried. All of this was to Ms. Shaw Baker and her estate's harm.⁴

13. All of these failings also constituted breaches of the fiduciary duties owed by Defendant Kouten to the decedent Alice Shaw Baker, which proximately caused injury and damage to Ms. Shaw Baker during her lifetime and continued with the resulting need for plaintiffs to file a Will Contest and now to seek this relief to vindicate Ms. Shaw Baker's rights and desires.

14. In my opinion, Attorney Kouten's conduct, which included this concurrent and subsequent representation of the other defendants, fell below the standard of care, skill, diligence, and loyalty expected of lawyers in South Carolina. This deficient conduct proximately caused injury to Ms. Shaw Baker and constitutes legal malpractice.

15. Application of Rules of Professional Conduct in Legal Malpractice actions: In *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 472 S.E.2d 612 (1996), the Supreme Court held that violation of the rules of professional conduct was not per se

malpractice, but experts could rely upon the rules in expressing opinions about whether a lawyer accused of malpractice had violated the standard of care required of lawyers.

16. I have been retained as an expert witness by counsel for plaintiffs. My expert opinions are based on the allegations of the Complaint and the evidence available to me at this time; these opinions are, therefore, subject to expansion and modification as further evidence or issue develops.

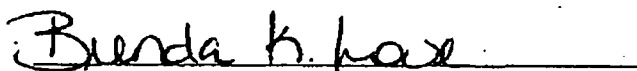
FURTHER, AFFIANT SAYEATH NAUGHT.

By: 
Mark W. Hardee

Subscribed and sworn to before me

This 16th day of November, 2012.

(SEAL)



Notary Public of South Carolina

My Commission Expires: Dec 20, 2016

MARK W. HARDEE
THE HARDEE LAW FIRM
2301 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205

CURRICULUM VITAE

Professional Contact Information:

- Phone: (803) 799-0905
- Fax: (803) 799-0470
- E-Mail: mwhardee@bellsouth.net

Education:

- University of South Carolina School of Law, Columbia, South Carolina, 1986 J.D.
- College of Charleston, Charleston, SC, 1983 B.A., Major: Political Science

Birth Information:

- 1961, Columbia, South Carolina, United States of America

Bar Admissions:

- South Carolina, 1986
- U.S. District Court, 1988
- U.S. Court of Appeals 4th Circuit, 1995
- U.S. Court of Appeals 5th Circuit, 2000
- U.S. Court of Appeals 10th Circuit, 2002
- U.S. Court of Federal Claims, 1999
- U.S. Court of Appeals Federal Circuit, 2001

Work History:

- Assistant Public Defender, Richland County Public Defender's Office, 1986-1988
- Attorney, Lewis Babcock & Hawkins, 1988-2003
- Attorney, The Hardee Law Firm, 2003-Present

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
_____)

IN THE COURT OF
COMMON PLEAS

ALICE SHAW BAKER, ET AL)
PLAINTIFFS)
vs.)
BESSIE HUCKABEE, ET AL)
DEFENDANTS)

TRANSCRIPT OF RECORD

2009-CP-10-3010

BETTY FISHER,)
PLAINTIFF)
vs.)
BESSIE HUCKABEE,)
DEFENDANT)

2012-CP-10-1332

NOVEMBER 28, 2012
CHARLESTON, SC

B E F O R E:

THE HONORABLE J.C. NICHOLSON, JR.

A P P E A R A N C E S:

JOHN HUGHES COOPER, ESQUIRE
LISA FISHER, ESQUIRE
ATTORNEYS FOR PLAINTIFFS

PETER A. KOUTEN, ESQUIRE
ATTORNEY FOR DEFENDANT

SHARON D. JONES
OFFICIAL COURT REPORTER

* * * NOVEMBER 28, 2012 * * *

THE COURT: All right. Who's here representing who?

MS. FISHER: Good morning, Your Honor. Lisa Fisher, pro hoc vice for the Plaintiff.

THE COURT: I'm sorry, what?

MS. FISHER: Lisa Fisher on behalf of the Plaintiff.

MR. COOPER: John Hughes Cooper for the Plaintiff.

THE COURT: And who is here for the defendant?

MR. KOUTEN: Judge, Peter Kouten for the defendants. On the roster, Your Honor, there are three --

THE COURT: I believe there are three motions, right?

MR. KOUTEN: Yes, sir.

THE COURT: A motion to disqualify or remove. A motion for -- I'm not sure what this -- there are three motions. Which ones do you want to hear first?

MR. KOUTEN: It would seem that since the only motion -- can we hear the 2012-CP-1332?

THE COURT: 1332? You want to hear it first?

MR. KOUTEN: Okay. That's fine. Is that agreeable with the plaintiffs?

1 by the Probate Court. This happened from October 2008
2 through her death in February of 2009. There was never
3 a period of time when he did not represent her.

4 He was never discharged. He acted in a variety
5 -- in all of those capacities, both under the Rules of
6 Professional Conduct and the principals of -- in
7 Townsend vs. Townsend, which is case 323 SC 309, this
8 creates a non waive-able conflict of interest.

9 During the period -- during Alice's life, we
10 allege, and during her -- after her death, he has
11 represented Huckabee, Slade and Byrd. These
12 individuals have adverse interest to Alice Shaw Baker's
13 true intentions with her regard to her estate.

14 Her estate was supposed to go to animal
15 charities. They knew that. He's continued to act
16 during the time he was counsel for Alice Shaw Baker.
17 He -- we have alleged in the complaint that he -- I'm
18 sorry -- I lost track -- that he obtained confidential
19 information from Alice Shaw Baker and it imposes a
20 problem. These conflicts create non waive-able
21 conflicts in the duty of loyalty and confidentiality --

22 **THE COURT:** The Townsend case, was that
23 appealed -- was that case put out as a result of a
24 professional misconduct or was that put out on a motion
25 where somebody asked someone to be removed, the facts

1 of it?

2 **MS. FISHER:** Yeah. My recollection is that
3 Townsend involved the representative of the child
4 during the time there was a spousal issue.

5 **THE COURT:** Conflict of interest, representing a
6 father who had previously served as guardian for the
7 minor child. But did it arise out of professional
8 misconduct or was there someone -- a motion such as
9 this, to have an attorney removed?

10 **MS. FISHER:** My recollection is it was a motion to
11 remove.

12 **THE COURT:** Okay. Do you agree with that?

13 **MS. FISHER:** In the event the Court -- excuse
14 me -- I didn't hear you, Your Honor.

15 **THE COURT:** Do you agree with that?

16 **MR. KOUTEN:** I do not, Judge. The court indicated
17 to the attorney --

18 **THE COURT:** Was the -- was the opinion published
19 as a result of professional misconduct or was it a
20 motion to have an attorney removed?

21 **MR. KOUTEN:** It was not professional misconduct.

22 **THE COURT:** What was it?

23 **MR. KOUTEN:** It was -- from my reading of the
24 case, Judge, the -- the attorney was appointed as
25 guardian ad litem for the child in a prior proceeding.

1 Then during the divorce action, he went to represent
2 the husband. The court said you can't -- you can't do
3 that. It's a family court matter --

4 **THE COURT:** How did it come up?

5 **MR. KOUTEN:** The -- the attorney asked for
6 reconsideration. And the court said, you don't have
7 standing for reconsideration because you're not the
8 guy, but since this is important to the bench and bar,
9 we're going to go through and explain the distinction
10 here and why a guardian ad litem for a child in a
11 family court setting, in a custody issue, is not
12 appropriate. So it's really not on point in this case.

13 **THE COURT:** I understand.

14 **MR. KOUTEN:** But those are the facts.

15 **THE COURT:** Ms. Fisher, let me -- let me just ask
16 you this question: I don't know if it -- what he has
17 done is a violation of professional ethics or not. I'm
18 not going to delve into that, but that's an issue to be
19 dealt with, with the BAR and the Supreme Court.

20 Why -- assuming, for purposes of my question,
21 that it is professional misconduct, why does that give
22 this court authority to have him removed? And what
23 basis are you asking me to have him removed?

24 **MS. FISHER:** Well, Your Honor, if there is a
25 conflict of interest, they have -- he has to be

1 removed.

2 THE COURT: Well --

3 MS. FISHER: He's continuing to represent --

4 THE COURT: But that's Bessie Huckabee's
5 problem --

6 MS. FISHER: No.

7 THE COURT: Not yours.

8 MS. FISHER: It is not. It's Alice Shaw Baker's.

9 THE COURT: It seems like the interest would be
10 between Bessie Huckabee and him, not your client.

11 MS. FISHER: No, Your Honor.

12 THE COURT: Why?

13 MS. FISHER: It really doesn't, because the
14 conflict adversely affects Alice Shaw Baker's estate
15 and Townsend does discuss that. I have the case in
16 front of me right here, so I can glance at it,
17 discusses why the conflict is there.

18 The lawyer lacks standing to make the argument.
19 A lawyer who has formerly represented a client in
20 matters shall not thereafter represent another person
21 in the same or substantially related matter in which
22 the person's interests are materially adverse to the
23 interest of the former client --

24 THE COURT: But that's just telling -- that's just
25 warning the BAR about conduct, not removal.

1 **MS. FISHER:** Well, yes -- no, Your Honor, it's
2 about disqualification. He's disqualified to act --

3 **THE COURT:** Well, he didn't have standing because
4 he was no longer the guardian. He was acting as
5 attorney. That's the issue.

6 **MS. FISHER:** Well, Your Honor, the issue --

7 **THE COURT:** There was a standing issue.

8 **MS. FISHER:** The issue actually is about his
9 ability to represent. And his ability to represent is
10 significant because it -- it allows -- I'm trying to
11 find the language -- if -- this is in the context of
12 children, but all you have to do is replace decedent --
13 "if children or their parents knew the guardian might
14 later use the information gathered from an
15 investigation to -- and the position that might be
16 detrimental to the children, all parties might be even
17 more reluctant to discuss matters candidly". That's
18 talking about the policy reasons for it.

19 But it also relates to a motion for
20 disqualification. This court's assertion that it had
21 nothing to do with Alice Shaw Baker is wrong. If Alice
22 Shaw Baker was alive, he would have had to have written
23 consent from Alice to represent these people. She's
24 deceased, so she can't ever give consent for him to
25 represent.

1 And I'm asking this court to look at it as if
2 she were alive, would -- would the court say it doesn't
3 matter then? I don't think so. I think that this
4 court has to look at it as Alice Shaw Baker's interests
5 still matter. They still matter. It's still a
6 survival action --

7 **THE COURT:** But -- but how does that affect you,
8 your client, Betty Fisher?

9 **MS. FISHER:** Because he obtained information -- he
10 represented her --

11 **THE COURT:** He represented Betty Fisher?

12 **MS. FISHER:** No.. No. I'm sorry, Alice Shaw
13 Baker.

14 **THE COURT:** Well, how does that affect you?

15 **MS. FISHER:** It's affects us because he is
16 representing an adverse interest. It affects Alice
17 Shaw Baker. That -- he doesn't get to use his position
18 as court appointed attorney to obtain a case, continue
19 in a case after he has taken -- obtained information,
20 represented them during Alice's life. That's a
21 significant conflict --

22 **THE COURT:** I don't disagree it may be a violation
23 of professional ethics. I don't know. But you're
24 asking me to remove him from a case.

25 **MS. FISHER:** Right.

1 **THE COURT:** That's a different horse.

2 **MS. FISHER:** Well, Your Honor, that's what motions
3 for disqualification are about. It -- it -- you know,
4 he had a duty to Alice Shaw Baker. That was his first
5 duty.

6 **THE COURT:** I don't doubt that --

7 **MS. FISHER:** Right --

8 **THE COURT:** -- I don't disagree with that. But my
9 question is, how do you cross the hurdle to Betty
10 Fisher?

11 **MS. FISHER:** It's not about Betty Fisher. It's
12 about --

13 **THE COURT:** Well, Betty Fisher is the one who is
14 asking him to be removed.

15 **MS. FISHER:** Well, Betty Fisher is acting in dual
16 capacities here. She is asking on behalf of -- it's a
17 will contest. He can't represent them in that action,
18 Your Honor. He obtained information. He is a witness
19 during that period of time. He represented adverse
20 interests. He advised them as to actions they took
21 during her life, which although not relevant at this
22 moment, still show that he was having a dual
23 relationship. And that matters to Alice Shaw Baker.
24 He doesn't get to continue on to represent people with
25 adverse interests. He will be called as a witness and

1 his actions adversely affect the estate, Your Honor.
2 It's just not -- you can't -- it's common knowledge
3 that an attorney can't represent another person.

4 So if you want to set aside the Rules of
5 Professional Conduct for the moment, I would say this:
6 It's -- the accepted practice, if you just accept that
7 claim that an attorney doesn't get to represent
8 conflicting interests, and would the court take the
9 same position if she were alive. And that's really
10 the -- the question I'm asking, can you do that? I
11 don't think you can. If there is a conflict, that
12 conflict absolutely demands that he be removed.

13 **THE COURT:** Okay. All right. Anything else?

14 **MR. KOUTEN:** Judge, I have --

15 **THE COURT:** I'm going to hear you in a second.
16 Anything else, Ms. Fisher?

17 **MR. KOUTEN:** I'm sorry.

18 **MS. FISHER:** If the court will give me one moment,
19 yes. Just one moment here.

20 (Pause.)

21 **MR. COOPER:** Your Honor, might I point out that in
22 the Townsend v. Townsend case -- and I'm reading from
23 the first page here in the factual background. It does
24 say that after learning -- "after learning the lawyer
25 had served as guardian ad litem for daughter in a

1 custody proceeding a few years earlier, the Judge, on
2 her own motion, removed lawyer as father's counsel and
3 stopped the hearing". So in other words, apparently
4 this -- this case, Townsend v. Townsend, was on the
5 Judge's own motion.

6 **MS. FISHER:** I'm sorry, Your Honor. With regard
7 to laws governing disqualification, the courts consider
8 the Rules of Professional responsibility. They
9 consider the conflict that happens. A lawyer cannot
10 represent a client if representation is adverse to
11 another client's interests, unless both clients
12 consent. Cannot. And if the court allows him to
13 continue on, when there was an adverse interest, it's a
14 wrong that Alice Shaw Baker's estate suffers.

15 And even though she's deceased, it does matter.
16 You have to remember that Betty Fisher is standing here
17 on behalf of Alice Shaw Baker. You know it -- Alice
18 Shaw Baker was a citizen of South Carolina. She loved
19 the state. And laws should apply to her as well. It's
20 not okay for an attorney to use his position as court
21 appointed counsel, and thereon continue to represent
22 people with an adverse position --

23 **THE COURT:** I understand your position. Thank you
24 very much. Mr. Kouten, I'll be glad to hear you.

25 **MR. KOUTEN:** Thank you, Your Honor. Back to that

1 Townsend v. Townsend case, Judge, the point that was
2 made was the confidential information received in the
3 representation of one, if able to adversely affect the
4 representation of person two, then that's a conflict.
5 Okay. And that's the point that Townsend makes. But I
6 don't think we can go as far as saying just replace the
7 child with decedent. That's not what that Judge was
8 saying.

9 The Judge in that case was indicating that this
10 is an on-going situation where you have information
11 about this child or what the child wants, about the mom
12 and the dad, and now you just represent the dad.
13 That's a big conflict. We don't have that here.

14 Judge, I was appointed as her guardian ad litem.
15 I don't have any confidential information on Alice Shaw
16 Baker because she had 24 hour care. Every time I met
17 with her, I met with her with somebody else. Any time
18 I got information from her, I provided it to the court.
19 In fact, I stand by every single attachment that's in
20 here.

21 I was charged with visiting her. I was charged
22 with checking up on her, making sure she -- she loved
23 --

24 **THE COURT:** What about her argument that it
25 affects her client because she's possibly an heir to

1 the estate?

2 MR. KOUTEN: I -- I don't see how that affects her
3 -- well, yeah, it does as a potential heir to the
4 estate --

5 THE COURT: Right. Right.

6 MR. KOUTEN: Because as -- during my term as
7 guardian ad litem, it was revealed that Alice Shaw
8 Baker had a last will and testament. The Probate
9 Court, at the final appointment hearing, asked that the
10 last will and testament be turned over to the court,
11 which they did.

12 When Alice Shaw Baker died, they turned the
13 original of that will over. Now there's an allegation
14 by Attorney Fisher, who was in her fiduciary capacity
15 as guardian and conservator, says at some point Alice
16 Shaw Baker -- who, by the way, was incapacitated on all
17 seven grounds in the State of South Carolina -- she
18 couldn't contract, she couldn't -- they allowed her to
19 have \$50 a week -- she indicates that Alice revoked the
20 will.

21 But then they turn it over the court. If you
22 look at the statute, well, if you are going to revoke
23 the will, you've got to obliterate it, tear it, burn
24 it, all of the things that weren't done.

25 Not to mention the problem that you have with

1 alleging that and not telling anyone, including the
2 court that said, whoa, wait a second now, she's saying
3 that she doesn't want to do this after -- after the
4 fact. I think the problem that we have here is that
5 when you have an attorney, who doesn't have an adverse
6 position, and is walking step in step with what the
7 decedent wanted and knows what the decedent wanted, and
8 that's different from what they want, then they need to
9 ask me to be removed. Judge, there is no conflict
10 here. I'm not in conflict with anybody.

11 Everybody who signed on as defendants under my
12 representation -- and don't get me wrong, Judge,
13 looking at this kind of hindsight 20/20 thing, probably
14 that was a mistake, but I didn't understand it. I
15 didn't understand that there would be a TRO filed
16 against the personal representative.

17 I didn't understand that the modification that I
18 sought and was granted, allowing the personal
19 representative to do administrative duties, because the
20 original order said temporary restraint from all
21 things, leaving her in a position to be derelict in her
22 duty. The modification was granted. Yeah, you can do
23 administrative things.

24 Appeal to the three judge panel of the SC Court
25 of Appeals, we prevailed. Appeal to the full panel of

1 the South Carolina Court of Appeals, this is a TRO -- a
2 Writ of Certiorari to the South Carolina Supreme Court
3 -- two years later, temporary restraining order, the
4 whole time they could have been asking for the removal
5 of the personal representative, asking for the will
6 contest, asking for all these things, now, they have to
7 come in at the 11th hour and say this needs to be done
8 or we are going to lose it, it's just a jumbled mess.

9 There are five actions filed surrounding these
10 cases. I mean, I have no doubt that if the Plaintiff
11 does not prevail, we will be appealed. So I don't know
12 if the whole validity of the will and what Alice wanted
13 is really of any concern here. It is to me.

14 So I do know having to be removed is a
15 substantial hardship on the defendants. I don't have
16 any confidential information. All the clients have
17 signed retainer agreements that said there is a
18 possibility that there is, and I may just have to say I
19 can't -- I can't represent you any more, they have all
20 signed off and said that's fine.

21 **THE COURT:** Anything else?

22 **MR. KOUTEN:** Nothing further.

23 **THE COURT:** All right. Thank you so very much.

24 Let me read your briefs, and I'll take that under
25 advisement and I will give y'all a decision as soon as

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001267
Circuit Case No. 2009-CP-10-3010

RECEIVED

NOV 20 2014

SC Court of Appeals

In the matter of the Estate of Alice Shaw Baker.

Betty Fisher and Lisa Fisher, ...Appellants

v.

Bessie Huckabee, Kay Passailague Slade,
Sandra Byrd, and Henry McMaster, in his Capacity as Attorney General, Defendants,

Of whom Bessie Huckabee, Kay Passailague Slade, and Sandra Byrd,
.....Respondents

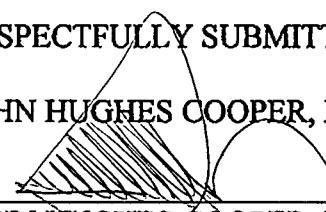
CERTIFICATE OF COUNSEL

I certify that this Record on Appeal complies with the Rule 210 (c) by containing all
materials proposed to be included by any of the parties and not any other material.

November 18, 2014

RESPECTFULLY SUBMITTED,

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001267
Circuit Case No. 2009-CP-10-3010

RECEIVED

NOV 20 2014

SC Court of Appeals

In the matter of ALICE SHAW BAKER.

BETTY FISHER and LISA FISHER.....Appellants

v.

BESSIE HUCKABEE, KAY PASSAILAGUE SLADE, SANDRA BYRD, and HENRY
MCMASTER, in his Capacity as Attorney General of South Carolina, Defendants

Of whom BESSIE HUCKABEE, KAY PASSAILAGUE SLADE, and SANDRA BYRD are
the.....Respondents

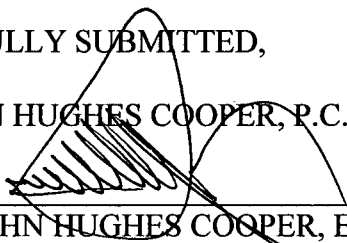
PROOF OF SERVICE

I certify that I have complied with Rule 210(a), SCACR, as Appellants were the only
parties who served a brief, and therefore Appellants are not required to serve the **Record on
Appeal** upon Respondents.

November 18, 2014

RESPECTFULLY SUBMITTED,

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