

# The Brooks Law Office, LLC

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RECEIVED

OCT 16 2015

SC Court of Appeals

September 9, 2015

Ms. V. Claire Allen  
Deputy Clerk  
The South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RE: In the Matter of the Care and Treatment of Alton Chisolm  
Appellate Case No. 2014-002351

Dear Ms. Allen;

I am in receipt of your correspondence dated September 1, 2015. Please accept this as my response to your inquiry concerning the initial brief of appellant and designation of matter.

As my previous correspondence to you indicated, there is an issue as to who is representing Mr. Chisolm concerning his SVP matter as well as his appeal. I was notified several months ago that I was no longer Mr. Chisolm's appointed attorney and that Mr. Falk was now assigned to this matter. Please see enclosed Order I have provided for your convenience.

I immediately contacted Judge Dennis and copied all appropriate parties as well as Mr. Chisolm. Mr. Chisolm does not want any other attorney but myself to continue with his matter but due to indigent clients not being able to "choose" their appointed counsel, Judge Dennis has asked that all the parties involved (including OID counsel) be available along with Mr. Chisolm on September 28<sup>th</sup> in Charleston to discuss who will in fact continue to represent Mr. Chisolm in his SVP matter as well as the pending Appeal.

If after the hearing on September 28<sup>th</sup>, Judge Dennis finds that I should remain as his counsel, I will promptly prepare and file the initial brief of appellant and designation of matter in the form of a McCoy (Anders) Petition.

Page 2 of 2  
2014-002351  
Chisolm

I hope that this correspondence explains the position of Mr. Chisolm at this time, and if you need any further information, please do not hesitate to contact me.

Sincerely,

Charles T. Brooks, III  
CTBIII/srw

cc: Deborah R. J. Shupe, Esquire  
Alan McCrory Wilson, Esquire  
Alton Chisolm  
Hugh Ryan, Esquire  
James Falk, Esquire

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF (Select one)  
 COMMON PLEAS  FAMILY COURT

IN THE MATTER OF THE CARE )  
AND TREATMENT OF ALTON )  
CHISLOM )

CASE NO: 2006-CP-10-2715  
APPOINTMENT OF COUNSEL

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OCT 16 2015

ORDER  
 AMENDED ORDER

FILED  
2015 APR 30 PM 3:00  
JULIE J. ANASTROPO  
CLERK OF COURT

SC Court of Appeals

TYPE OF CASE/PROCEEDING: (Check one)

- Post-Conviction Relief (PCR)/Habeas Case
- Sexual Violent Predator Case (SVP)
- Minor Name Change
- Abuse and Neglect
- Adoption
- Custody and/or Visitation
- Juvenile
- Other

It appears that Alton Chisolm who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one)

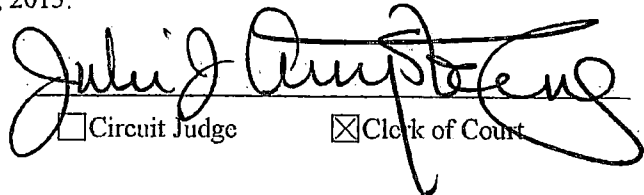
- Counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- Counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- Counsel was previously appointed by the court but has indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- Court appointed counsel has obtained \_\_\_\_\_, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: **New appointment for Annual Review hearing**

Therefore, it is ordered that James K. Falk, is hereby appointed as (Select one)  
 counsel  lead counsel (if capital PCR case)  guardian ad litem  
for the above-named person. Any counsel or GAL previously appointed is hereby relieved.

(If Death Penalty PCR Case) It is further ordered that \_\_\_\_\_, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 30TH DAY OF APRIL, 2015.

  
 Circuit Judge  Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov), and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
In Re Care and Treatment of )  
 )  
 )  
 )  
ALTON CHISOLM )  
 )  
Respondent, )  
\_\_\_\_\_ )

IN THE COMMON PLEAS COURT  
9<sup>th</sup> JUDICIAL CIRCUIT

CASE NO.: 2006-CP-10-2715

**RECEIVED**

OCT 16 2015

ORDER

SC Court of Appeals

DATE OF HEARING/CONFERENCE CALL: September 28, 2015

PRESIDING JUDGE: Hon. R. Markley Dennis

ATTORNEYS PRESENT: Charles Brooks, Esq. Respondent's former appointed counsel  
Hugh Ryan, Esq. South Carolina Commission for Indigent Defense  
James Bogle, Esq. Office of the South Carolina Attorney General  
James Falk, Esq. SCCID SVP Contract Attorney 9th Circuit

RESPONDENT: Alton Chisolm

#### Procedural History

The annual review process in this matter commenced on or about April 22, 2015. The Clerk of Court for Charleston County appointed James Falk as counsel for Mr. Chisolm for his annual review proceeding on April 30, 2015. Mr. Brooks had previously represented Mr. Chisolm after agreeing to be substituted as counsel for counsel appointed in accordance with SCACR 608. This Court received a letter from Mr. Brooks dated July 17, 2015 stating that Mr. Chisolm did not want a new attorney and he did not object to continuing as Mr. Chisolm's counsel. On July 27, 2015 Mr. Ryan forwarded a letter to the Court asserting that Mr. Falk should remain as appointed counsel, as he serves as the SVP contract attorney in the 9<sup>th</sup> Circuit. SCCID also requested to be heard on this matter.

#### Findings of Fact and Conclusions of Law

In 2012 the State of South Carolina established a contract system as part of the General Appropriations Act (Act 288, H4813) for the representation of indigent defendants in certain

case types to include SVP matters. Subsequent to the proviso establishing and funding the contract system, Chief Justice Toal issued an Order dated September 13, 2012 that established the procedures for implementation of the contract system. In paragraph two of the order it was provided that "SCCID shall establish all policies, procedures and contract provisions as it deems appropriate for the implementation of the system including, but not limited to the selection and compensation of contract awardees".

SCCID presented to the Court that for the transition from appointed counsel to contract counsel, on SVP matters, further procedures were implemented due to the procedural nature of these cases. SCCID, Court Administration, the Attorney General's Office and Department of Mental Health collaborated to develop a plan to transition SVP representation to contract counsel as outlined in a February 10, 2015 memorandum published by SCCID. The adopted procedure has been followed in this matter as Mr. Falk appointed at the being of a new annual review process.

Having heard the arguments of counsel the Court makes the following findings of fact on conclusions of law.

1. Pursuant to the Honorable Jean Toal's September 13, 2012 order, SCCID is authorized to "establish all policies, procedures and contract provisions as it deems appropriate for the implementation of the system including, but not limited to the selection and compensation of contract awardees".
2. The collaborative effort of four State agencies has established a fair and reasonable plan for the appointment of contract counsel in SVP matters. Mr. Falk handles numerous SVP matters and will provide competent and effective counsel for Mr. Chisolm.
3. Mr. Chisolm stated to the Court that he wanted Mr. Brooks to serve as his attorney. While Mr. Chisolm can retain counsel of his choice, to include Mr. Brooks, there is no right to the appointment of counsel of choice. It is well established that while indigent defendants have the right to the effective assistance of counsel there is no right to the appointment of counsel of choice. Wheat v. United States, 486, U.S. 153, 108 S.Ct. 1692 (1988); State v. Boykin, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996).

4. Mr. Falk shall remain as appointed counsel with Mr. Brooks relieved as counsel. Mr. Brooks will turn over the file and any other necessary materials to Mr. Falk.

**THEREFORE it is hereby ORDERED** that Mr. Charles Brooks is hereby relieved as counsel and Mr. Falk is appointed to represent Mr. Chisolm for these SVP proceedings.

**IT IS SO ORDERED!**

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R. Markley Dennis  
Presiding Judge, 9<sup>th</sup> Judicial Circuit

October \_\_\_\_, 2015

\_\_\_\_\_, S.C.

# FALK LAW FIRM, LLC.

James K. Falk

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

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OCT 16 2015

SC Court of Appeals

October 12, 2015

Clerk of Court  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: In the Matter of the Care and Treatment of Alton Chisolm  
Appellate Case No. 2014-002351

Dear Ms. Kitchings:

I have enclosed the following documents regarding this appeal:

1. Order of Appointment in Case No. 2006-CP-10-2715 dated April 30, 2015
2. Copy of letter from Charles Brooks, Esq. to the Court of Appeals dated September 9, 2015.
3. Copy of the proposed Order from September 28, 2015 hearing before the Honorable Markley Dennis

I believe that the procedural history of this matter is explained in the proposed Order. In addition to representing Mr. Chisolm in the SVP proceedings in Charleston Circuit Court, I was advised by the South Carolina Commission for Indigent Defense to represent Mr. Chisolm in this appeal.

I will tender an executed and entered copy of Judge Dennis's Order, however, in the meantime I want to know whether the proposed Order would suffice, or whether I need to file a motion for Substitution of Counsel.

Additionally, it appears from Mr. Brook's September 9<sup>th</sup> letter, that there are pending deadlines for ordering the hearing transcript, filing the designation of matter to be included on appeal. Please accept this letter as my request for a 60 day extension of time in these matters.

Regards

  
James Falk

Cc Charles Brooks; Hugh Ryan; and Alton Chisolm (without enclosures)

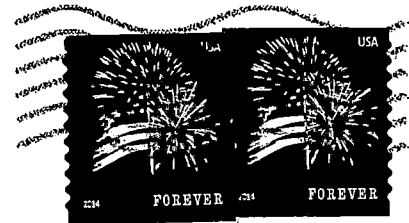
FALK LAW FIRM

PO Box 1058

Charleston, SC 29402

CHARLESTON SC 294

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Clerk of Court  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

OCT 16 2015

SC Court of Appeals

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