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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Case No.: 1998-CP-12-00325
Appellate Case Number: 2015-002289

Patricia E. King and Robbie King Jones, as Representatives
of W.R. King and Ellen King.....Plaintiffs,

Of Whom, Patricia E. King, is.....Appellant,
v.

Margie B. King and Robbie Patricia Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King,Respondents.

RESPONDENTS' COUNSEL'S PETITION TO BE RELIEVED OF RECORD

W. Michael Duncan, S.C. Bar No.: 0001162
Timothy F. Rogers, S.C. Bar No.: 04894
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-4000

ORIGINAL

Other Counsel of Record:

John E. Tyler, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29211

INTRODUCTION

The undersigned are counsel of record in the Lower Court for the Respondents hereinabove. Counsel hereby Petitions the Court to be relieved as counsel for the Respondents in this Appeal, with Justifiable Cause shown hereinbelow. Counsel's Petition to be Relieved of Record, follows.

NOTICE

Consistent with the South Carolina Appellate Court Rule, (hereinafter as, "SCACR"), set forth below, Respondents' counsel of record hereby provides Notice to the Respondents and counsel for the Appellant.

PETITION TO BE RELIEVED

Pursuant to Rule 264(b), SCACR, Respondents' counsel of record, hereby petitions this Court for an Order relieving them as counsel of record for the Respondents in the Appeal denominated hereinabove. The grounds for this Petition follow.

Generally, Respondents have failed (i) to respond to email and written communications from the undersigned counsel and (ii) to cooperate in the defense of this Appeal, denominated hereinabove. These failures and the specific failures set forth by Respondents herein, provide clear and Justifiable Cause for Respondents' counsel of record in the Trial Court, to be relieved as counsel of record in this Appeal.

Specifically, **Respondents have failed to acknowledge or respond or communicate with Petitioners on "10 occasions"**, (see, Exhibit "A" attached hereto).

However, Petitioners herein have protected Respondents' interests prior to the date of this Petition, as follows: Respondents' counsel of record have, *inter alia*, (i) drafted and filed a Return to Appellant's Motion to Reconsider the Trial Court's Order (ii) provided Respondents with copies of communications with the Trial Court, counsel opposite and the Court Reporter (iii) provided Respondents with a timely copy of Appellant's Notice of Appeal (iv) provided correspondence to Respondents asking if they wanted to engage Respondents' counsel of record in the Trial Court, with no response from Respondents and (v) provided Respondents with a timely copy of Appellant's Initial Brief.

Upon information and belief, Respondents herein, are not indigent.

Furthermore, the Respondents herein, have not engaged the services of Petitioners to handle the Appeal in this matter and no written Agreement has been executed with Respondents concerning the Petitioners' handling of this Appeal.

WHEREFORE, having set forth Justifiable Cause, generally and specifically with Exhibit "A" hereto, the undersigned petitions this Court to grant the relief sought in Respondents' Counsel's Petition to be Relieved as Counsel of Record; and

GRANT SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS JUST AND PROPER.

[Signature Page Follows]

Respectfully Submitted,
AUSTIN & ROGERS, P.A.



W. Michael Duncan, S.C. Bar No.: 0001162
Timothy F. Rogers, S.C. Bar No.: 04894
508 Hampton Street, Suite 300
P.O. Box 15907
Columbia, South Carolina 29211
Phone: (803) 256-4000
Fax: (803) 252-3679

February 2, 2016
Columbia, South Carolina

Exhibit "A"

to

Petition to be Relieved as Counsel of Record
(Appellate Case No.: 2015-002289)

- September 2, 2015-Email communication to Respondents, transmitting Court Reporter's "past due" Invoice, in the amount of \$1,286.40.
- September 28, 2015-Written correspondence to Respondents, transmitting Trial Court's Order (Federal Express);
- October 1, 2015-Email communication to Respondents, transmitting Appellant's Motion to Reconsider Trial Court's Order;
- October 2, 2015-Email communication to Respondents, transmitting a copy of Respondent's Return to Appellant's Motion to Reconsider Trial Court's Order;
- October 7, 2015 – Email communication to Respondents, transmitting Trial Court's Final Order;
- October 8, 2015 –Email communication to Respondents, concerning Trial Court's Order;
- November 13, 2015 – Email communication to Respondents, informing them of Appellant's filing of a Notice of Appeal and Court Reporter's "past due" Invoice in the amount of \$1,286.40 and providing copies of the same;
- January 11, 2016 – Written correspondence to Respondents, conveying Trial Judge's request for payment of his costs as Special Referee and Trial Judge's plan to file a Rule to Show Cause to Respondents, for contempt. Also third request to Respondents, to reimburse Respondents' counsel of record for their payment of, "past due" Court Reporter fees from appearance in Trial Court, in the amount of \$1,286.40, (Federal Express);
- January 20, 2016 – Email communication to Respondents, transmitting Appellant's Initial Brief; and
- January 21, 2016 – Written correspondence to Respondents, concerning Initial Brief, (Certified Mail/Return Receipt Requested).

Note: Petitioners have not received payment for any of the actions outlined hereinabove, including the drafting of a Return to Appellant's Motion and Petitioners have not received reimbursement of their payment of \$1,286.40 to Garber Reporting Services.

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Patricia E. King and Robbie King Jones, as Representatives
of W.R. King and Ellen King.....Plaintiffs,

Of Whom, Patricia E. King, is.....Appellant,
v.

Margie B. King and Robbie Patricia Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King,Respondents.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have
caused a copy of Respondents' Counsel's Petition to be Relieved as Counsel, with Exhibit
"A" and this Proof of Service to be served, via U.S. Mail on February 2, 2016, as
addressed on following page.

ORIGINAL

Proof of Service
Appellate Case No.: 2015-002289
Page 2 of 2

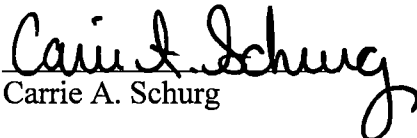
Robbie King
228 East Black Street
Rock Hill, South Carolina 29730

Nelson King
1517 Shadewood Court
Rock Hill, South Carolina 29732

Margie King
c/o: Robbie King
228 East Black Street
Rock Hill, South Carolina 29730

Hon. John R. King
Post Office Box 11555
Rock Hill, South Carolina 29732

John E. Tyler, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29211


Carrie A. Schurg

February 2, 2016
Columbia, South Carolina

Austin & Rogers, P.A.

ATTORNEYS AND COUNSELORS AT LAW

C.C. HARNES, III
(1949-2010)

TIMOTHY F. ROGERS
RAYMON E. LARK, JR.
RICHARD L. WHITT
EDWARD L. EUBANKS
W. MICHAEL DUNCAN

COLUMBIA OFFICE:
CONGAREE BUILDING
508 HAMPTON STREET, SUITE 300
POST OFFICE BOX 11716
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 256-4000
FACSIMILE: (803) 252-3679
WWW.AUSTINROGERSPA.COM

OF COUNSEL:
WILLIAM FREDERICK AUSTIN
JEFFERSON D. GRIFFITH, III*

* ALSO ADMITTED IN N.C.

February 2, 2016

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SC Court of Appeals

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

- RE: • Patricia King, v. Margie King, *et al.*
• Appellate Case Number:# 2015-002289
• **Petition to be Relieved as Counsel of Record**

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the (i) Petition to be Relieved as Counsel of Record and (ii) Proof of Service. Also enclosed, please find a check in the amount of \$25.00, which represents the appropriate Motion filing fee. However, this filing is a Petition, and if the filing fee is not required, please return the same to us.

Furthermore, the documents referred to in Exhibit "A" to our Petition, are voluminous and are not included in this filing. If the Court wishes any of the referenced documentation, please advise.

Please accept these documents for filing and acknowledge receipt of the same by file-stamping the extra copies enclosed and returning them to me, via our courier. Please let us know you have any questions or need additional information.

Kind Regards,
AUSTIN & ROGERS, P.A.,
W. Michael Duncan
W. Michael Duncan
Timothy F. Rogers

Enclosures
cc: John E. Tyler, Esquire