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FEB 22 2016

**SC Court of Appeals**

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February 19, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Swiger v. Smith and Kelly, as Personal Representatives  
Appellate Case No. 2016-000096

Dear Ms. Kitchings:

As attorney of record for the Respondents, I hereby acknowledge receipt of Ms. DeHaven's Response to Respondents' Reply, accompanied by a copy of Mrs. Swiger's Last Will dated July 7, 2009, and a copy of a transfer of executorship statement dated August 20, 2014.

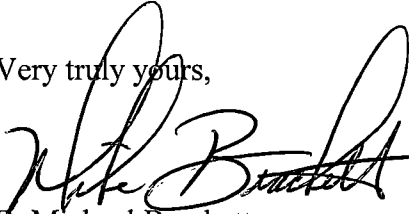
Ms. DeHaven's Response is not permitted by the Appellate Court Rules. Nevertheless, because of the filing of Mrs. Swiger's last will, I must advise the Court that I was told by Ms. DeHaven last week that a probate estate has not been opened to administer Mrs. Swiger's estate. Ms. DeHaven's Response does not say otherwise. She says only that the last will named Janet Loeffler and Rebecca McDowell to serve jointly as Executor and that Loeffler designated DeHaven to serve as Executrix in her stead. The transfer of executorship document designating Ms. DeHaven to serve as executor is not effective or enforceable because it was executed 14 months before Mrs. Swiger's death (only Mrs. Swiger could then change her last will), and it was not also signed by the other co-Executor, Rebecca McDowell. In fact, McDowell has not executed any of the filings made thus far in this matter. Ms. DeHaven is apparently acting under the mistaken belief that merely being named as executor in the will, or being designated by the named executor before the effective date of the last will, is all that is required and that no probate estate need be opened. If an estate has not been opened, no one has been appointed to serve as personal representative and no one has authority to act on behalf of the estate. Even if Ms. DeHaven were to now open an estate and obtain appointment, she could not represent the estate in this appeal. Brown v. Coe, 365 S.C. 137, 616 S.E.2d 705 (2005), clarified S.C. , 620 S.E.2d 323 (2005) (a nonlawyer personal representative of an estate cannot represent the estate on appeal).

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Respondents are not at fault for this procedural situation. Unfortunately, Ms. DeHaven created this situation by not timely advising the circuit court or the lawyers of Mrs. Swiger's death and by assuming, wrongly so, that she had authority to act in these pending legal proceedings after Mrs. Swiger's death. The Notice of Appeal filed herein is a nullity, and the appeal should be dismissed so that administration of the Vinton Tucker Estate is not further delayed.

Very truly yours,



B. Michael Brackett

cc: Margaret Kelly  
Ben Smith  
Carol DeHaven (6600 Hawkins Gate Rd., La Plata, MD 20646)

