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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-06209  
Appellate Case No. 2016-001547

**RECEIVED**  
NOV 10 2016  
SC Court of Appeals

Emil P. Kondra individually, and as Trustee  
of the Emil P. Kondra Revocable Trust,  
Emil P. Kondra, LLC, Emil P. Kondra  
Family Trust, Eileen Saxton and Douglass  
E. Kondra, as Trustees of the Emil P. Kondra  
Family Trust, Douglass E. Kondra, Helen Perry,  
and Lawrence F. D'Alessio .....Respondents.

v.

Robert A. Nitsch and Veronica G. Nitsch,  
Individually and as Trustees of the Amended and  
Restated Veronica G. Nitsch Revocable Trust and  
The Amended and Restated Robert A. Nitsch  
Revocable Trust.....Respondents.  
  
Stephanie H. Burton and Gibbes Burton, LLC .....Appellants.

**CONSENT MOTION FOR REMAND AND TRIAL COURT ENTRY OF ORDER  
GRANTING MOTION TO BE RELIEVED**

Pursuant to Rule 240, SCACR, and with the consent of the undersigned counsel,  
the parties hereto consent to remand of this matter to the Trial Court and direction to the  
Trial Court to enter an order granting the Motion of Stephanie H. Burton, Esq., and  
Gibbes Burton, LLC (hereinafter collectively referenced as "Gibbes Burton"), to be  
relieved as counsel of record for Robert A. Nitsch and Veronica G. Nitsch, Individually

and as Trustees of the Amended and Restated Veronica G. Nitsch Revocable Trust and The Amended and Restated Robert A. Nitsch Revocable Trust (hereinafter collectively referenced as the "Nitsch Parties").

This Appellate Case is one of four separately-filed appeals of C.A. File No, 2012-CP-23-06211 from the Court of Common Pleas for Greenville County (the "Common Pleas Action"). The other appeals from the Common Pleas Action are: (1) Appellate Case No. 2016-000130, which is an appeal of the Trial Court's Order Granting Summary Judgment to the plaintiff in the Common Pleas Action, which has been remanded with the consent of the parties thereto; (2) Appellate Case No. 2016-001545, which is an appeal of the Trial Court's Order Denying Blair Fensterstock and Fensterstock and Partners LP's Motion to Be Relieved as Counsel in the Common Pleas Action; and (3) Appellate Case No. 2016-001583, which is an appeal of the Trial Court's Order granting sanctions to Kondra, payable by the Nitsch Parties, and which has been remanded with the consent of the parties thereto.

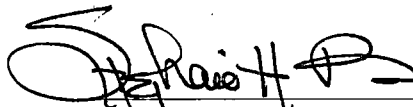
In this Motion, the Parties' consent includes that of Attorney Jeffrey P. Dunlaevy, who is counsel of record in Appellate Case No. 2016-000130 for the Nitsch Parties, who are the clients of Gibbes Burton in the Common Pleas Action. Attorney Dunlaevy consents, based on authority given to him by the Nitsch Parties.

On behalf of Robert Nitsch and Veronica Nitsch, Bland Richter, LLP, has filed a lawsuit, case number 2016-CP-23-04705 against Blair C. Fensterstock, Eugene D. Kublanovsky and Stephanie Burton, alleging legal malpractice by them in the prosecution of the Common Pleas Action. The filing of C.A. File No. 2016-CP-23-04705 has created a concurrent conflict of interest for Gibbes Burton in their continued representation of the

Nitsch Parties in the Common Pleas Action. The undersigned all agree that, due to present circumstances, and due to retention of separate counsel to represent the interests of the Nitsch Parties, it is appropriate for this Appellate Case to be remanded to the Trial Court and the Trial Court instructed to enter an Order relieving Gibbes Burton of their duties as counsel of record in the Common Pleas Action, pursuant to the consent of the undersigned.

~~October~~, 2016

November 1, 2016



Stephanie H. Burton  
Gibbes Burton, LLC  
308 East St. John Street  
Spartanburg, South Carolina 29302  
(864) 327-5000  
*Pro Se and Attorneys for  
Gibbes Burton, LLC*

We Consent to the Above Motion:



A.M. Quattlebaum  
Nelson Mullen Riley & Scarborough, LLP  
PO Box 10084  
Greenville, SC 29603-0084  
*Attorney for Plaintiff*

Jeffrey P. Dunlaevy  
Stephenson & Murphy, LLC  
207 Whitsett St.  
Greenville, SC 29601  
*Attorney for Defendants*

Blair C. Fensterstock  
Fensterstock & Partners, LLP  
100 Broadway, 8<sup>th</sup> Floor  
New York, NY 10005  
*Attorneys for Appellant  
Fensterstock & Partners, LLP*

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The Amended and Restated Robert A. Nitsch  
Revocable Trust.....Respondents.

Stephanie H. Burton and Gibbes Burton, LLC .....Appellants.

**MEMORANDUM IN SUPPORT OF CONSENT MOTION FOR REMAND AND  
TRIAL COURT ENTRY OF ORDER GRANTING MOTION TO BE RELIEVED**

“An attorney [for a party] may be changed by consent, or upon just cause shown,  
and upon such terms as shall be just, upon application, by order of the Court, and not  
otherwise.” Rule 11(b), SCRCP. Robert A. Nitsch and Veronica G. Nitsch, Individually  
and as Trustees of the Amended and Restated Veronica G. Nitsch Revocable Trust and

The Amended and Restated Robert A. Nitsch Revocable Trust (“Nitsch Parties”) filed a lawsuit, case number 2016-CP-23-04705, in the Court of Common Pleas for Greenville County against Blair C. Fensterstock and Stephanie Burton, in connection with their respective services as counsel for the Nitsch Parties in the underlying Common Pleas Action (the “Malpractice Action”). The Nitsch Parties have retained separate counsel to represent their interests, in Appellate Case No. 2016-000130 and with regard to the underlying Common Pleas Action.

Rule 1.7 of the Rules of Professional Conduct states that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” Rule 1.7, RPC, Rule 407, SCACR. Rule 1.7 further states that “[a] concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.” *Id.* Gibbes Burton’s representation of the Nitsch Parties has now been materially limited by the fact that Robert Nitsch and Veronica Nitsch have sued Stephanie Burton, among other parties, alleging legal malpractice in the handling of the underlying Common Pleas Action.

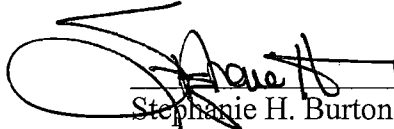
The only appropriate means to address the concurrent conflict of interest created by the filing of the Malpractice Action against Burton is to require the trial court to relieve Stephanie H. Burton and Gibbes Burton as counsel of record for the Nitsch Parties in the underlying Common Pleas Action. Accordingly, it is necessary and appropriate for this Court to remand this matter to the Trial Court directing that the Trial Court issue an order relieving Stephanie H. Burton and Gibbes Burton as counsel of record for the Nitsch Parties in the underlying Common Pleas Action.

Each of the parties to this Appeal agree and consent to the relief of Stephanie H.

Burton and Gibbes Burton as counsel of record in the Common Pleas Action.

~~October~~, 2016

November 1, 2016



Stephanie H. Burton  
Gibbes Burton, LLC  
308 East St. John Street  
Spartanburg, South Carolina 29302  
(864) 327-5000  
*Pro Se and Attorneys for  
Gibbes Burton, LLC*

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Edward W. Miller, Circuit Court Judge

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E. Kondra, as Trustees of the Emil P. Kondra  
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The Amended and Restated Robert A. Nitsch  
Revocable Trust.....Respondents.

Stephanie H. Burton and Gibbes Burton, LLC.....Appellants.

**PROOF OF SERVICE**

I Certify that I served the *Consent Motion for Remand and Trial Court Entry of  
Order Granting Motion to be Relieved and Memorandum in Support* by depositing copies  
of them in the U.S. Mail, postage prepaid, addressed as follows:

A.M. Quattlebaum  
Nelson Mullins Riley & Scarborough, LLP  
PO Box 10084  
Greenville, SC 29603-0084

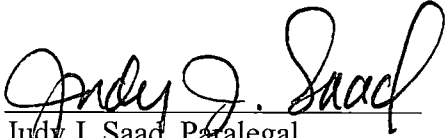
Jeffrey P. Dunlaevy  
Stephen & Murphy, LLC  
207 Whitsett Street  
Greenville, SC 29601

Blair C. Fensterstock  
Fensterstock & Partners, LLP  
100 Broadway, 8<sup>th</sup> Floor  
New York, NY

Ronald L. Richter, Jr.  
Bland Richter, LLP  
The Peoples Building Mezzanine Level  
18 Broad Street  
Charleston, SC 29401

Robert A. Nitsch and Veronica G. Nitsch  
8135 La Jolla Shores Drive  
La Jolla, CA 92037

November 7, 2016

  
Judy J. Saad, Paralegal

# WILKES LAW FIRM P.A.

MICHAEL B.T. WILKES\*\*  
ELLEN S. CHEEK\*  
J. DERHAM COLE, JR.  
C. DANIEL ATKINSON\*\*  
J. ALEXANDER JOYNER\*  
S. HARRISON WILLIAMS\*

\*CHARLESTON OFFICE  
\*ALSO MEMBER GEORGIA BAR  
\*ALSO MEMBER NORTH CAROLINA BAR  
\*CERTIFIED MEDIATOR

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WILKES LAW FIRM, P.A.  
Reply to: SPARTANBURG OFFICE  
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200 MEETING STREET, SUITE 205  
CHARLESTON, SOUTH CAROLINA 29401  
843.737.6229

WWW.WILKESLAW.COM

November 7, 2016

**Via U.S. Mail**

The Honorable Jenny Abbott Kitchings  
S.C. Court of Appeals  
PO Box 11629  
Columbia, SC 29211  
Att: Amelia

**Re: *Kondra and Campbell v Robert A. Nitsch, et al***  
**In the Court of Appeals, State of South Carolina**  
**Appellate Case Numbers: 2016-001546 and 2016-001547**

Dear Amelia:

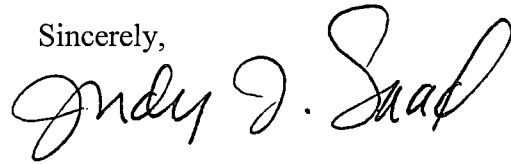
Enclosed for filing please find the original and 7 (seven) copies of the following in the above matters:

1. *Consent Motion for Remand and Trial Court Entry Of Order Granting Motion to Be Relieved, Memorandum in Support of Consent Motion for Remand and Trial Court Entry Of Order Granting Motion to Be Relieved, and Proof of Service* in 2016-001546; and
2. *Consent Motion for Remand and Trial Court Entry Of Order Granting Motion to Be Relieved, Memorandum in Support of Consent Motion for Remand and Trial Court Entry Of Order Granting Motion to Be Relieved, and Proof of Service* in 2016-001547.

Also enclosed is our firm check in the amount of \$50.00 for your costs for filing these Motions. Once filed, please return clocked copies to me in the envelope provided.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Judy J. Saad". The signature is written in black ink and is positioned above the typed name and contact information.

Judy J. Saad, Paralegal  
[jsaad@wilkeslaw.com](mailto:jsaad@wilkeslaw.com)

Enclosures

cc: All Attorneys of Records



**First Class Mail**

**WILKES  
LAW FIRM P.A.**  
127 Dunbar Street, Suite 200  
Spartanburg, SC 29306

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