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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

RECEIVED
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SC Court of Appeals

Case No. 2012-CP-23-06209
Appellate Case No. 2016-001545

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'AlessioRespondents.

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.

Fensterstock & Partners, LLPAppellants.

**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 Blair C. Fensterstock, Esq., and
Fensterstock & Partners, LLP (hereinafter collectively referenced as "Fensterstock &
Partners"), 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 pending 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. 2016-001547, which is an appeal of the Trial Court's Order Denying Stephanie H. Burton and Gibbes Burton, LLC'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 Fensterstock & Partners 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 Fensterstock & Partners of their duties as counsel of record in the Common Pleas Action, pursuant to the consent of the undersigned.

October 28, 2016



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

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


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

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 Fensterstock & Partners of their duties as counsel of record in the Common Pleas Action, pursuant to the consent of the undersigned.

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100 Broadway, 8th Floor
New York, NY 10005
Attorneys for Appellant
Fensterstock & Partners, LLP

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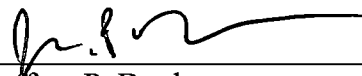
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October ____, 2016

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100 Broadway, 8th Floor
New York, NY 10005
Attorneys for Appellant
Fensterstock & Partners, LLP

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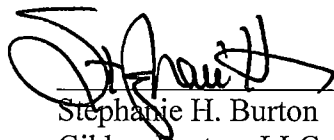
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Fensterstock & Partners, LLP
100 Broadway, 8th Floor
New York, NY 10005
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Fensterstock & Partners, LLP

We Consent to the Above Motion:

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Greenville, SC 29603-0084
Attorney for Plaintiff

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Greenville, SC 29601
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Restated Veronica G. Nitsch Revocable Trust and
The Amended and Restated Robert A. Nitsch
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Fensterstock & Partners, LLP.....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), SCRPC. 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.* Fensterstock & Partners’ representation of the Nitsch Parties has now been materially limited by the fact that Robert Nitsch and Veronica Nitsch have sued Blair C. Fensterstock, 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 Blair C. Fensterstock and Fensterstock & Partners, LLP, 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 Blair C. Fensterstock and Fensterstock & Partners, LLP 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 Blair C. Fensterstock and Fensterstock & Partners, LLP as counsel of record in the Common Pleas Action.

October 28, 2016



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

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APPEAL FROM GREENVILLE COUNTY
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Revocable Trust.....Respondents.

Fensterstock & Partners, LLP.....Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of November, 2016, he caused to be served the **Consent Motion for Remand and Trial Court Entry of Order Granting Motion to be Relieved and Memorandum in Support of Consent Motion for Remand and Trial Court Entry of Order Granting Motion to be Relieved** upon the attorney for all parties, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

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

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

Stephanie H. Burton
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, South Carolina 29302
Pro Se and Attorneys for Appellant
Gibbes Burton, LLC

Blair Fensterstock For

Blair Fensterstock
Fensterstock & Partners, LLP
100 Broadway, 8th Floor
New York, NY 10005
(212) 785-4100
Attorneys for Appellant
Fensterstock & Partners, LLP

November 7, 2016

Ms. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

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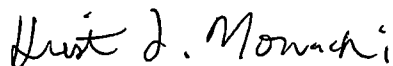
Re: Emil P. Kondra individually, and as Trustee of the Emil P. Kondra Revocable Trust, Emil P. Kondra, LLC, Emil P. Kondra Family Trust, Eileen Saxton and Douglass E. Kondra, as Trustees of the Emil P. Kondra Family Trust, Douglass E. Kondra, Helen Perry, and Lawrence F. D'Alessio v. Robert A. Nitsch 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 and Fensterstock & Partners, LLP
Appellate Case No. 2016-001545

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Consent Motion for Remand and Trial Court Entry of Order Granting Motion to be Relieved and Memorandum in Support of Consent Motion for Remand and Trial Court Entry of Order Granting Motion to be Relieved in this case. Proof of service in the form of a Certificate of Service is also enclosed. Please return a stamped copy when it has been filed in the enclosed stamped, self-addressed envelope for that purpose. Thanks, as always, for your assistance.

Yours very truly,

SMITH MOORE LEATHERWOOD LLP



Kristen L. Nowacki

KLN/sps
Enclosures

cc: Mr. A.M. Quattlebaum
Mr. Jeffrey P. Dunlaevy
Ms. Stephanie H. Burton

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LEATHERWOOD**
ATTORNEYS AT LAW

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