

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2016-002226

Estate of Valerie D'Agostino,

v.

Nicholls & Crampton, P.A.,

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

Respondent,

Petitioner.

PETITIONERS MOTION TO ALLOW LATE FILING OF PETITION FOR WRIT OF
CERTIORARI

Pursuant to South Carolina Appellate Court Rule 240, Petitioner, Nicholls & Crampton, P.A., by and through undersigned counsel, hereby moves for the South Carolina Supreme Court to allow the late filing of Petitioner's Petition for Writ of Certiorari.

MEMORANDUM IN SUPPORT

The Court of Appeals denied Petitioner's Petition for Rehearing on September 23, 2016. According to South Carolina Appellate Court Rule 242(c), Petitioner's Petition for Writ of Certiorari had to be served and filed by October 24, 2016. However, Petitioner did not file its Petition for Writ of Certiorari until November 2, 2016 due to Hurricane Matthew and in reliance

on this [Supreme] Court's Order dated October 10, 2016.

The South Carolina Supreme Court's Order of October 10, 2016 indicated that "this [Supreme] Court finds it appropriate to declare the days of Wednesday, October 5, 2016, through Friday, October 14, 2016, to be statewide "holidays" for the purposes of computing time under Rule 263 of the South Carolina Appellate Court Rules..." This declaration came in response to the horrific impact of Hurricane Matthew which caused the South Carolina Governor to declare the days of Wednesday, October 5, 2016 through Friday, October 14, 2016 as "holidays". Although the impact was most severe in the lowcountry of South Carolina, home to the Petitioner's counsel, the Court's Order applied statewide.

In response to the Governor's evacuation Order for the County of Beaufort, the Petitioner's place of business was boarded up, equipment safely stored, and Petitioner's counsel and all staff, evacuated Beaufort County on or before Wednesday, October 5, 2016. Following the evacuation, the Petitioner's counsel's place of business on Hilton Head Island was inaccessible on a business day as a result of the hurricane, public officials' decisions, and significant debris surrounding the Petitioner's counsel's place of business until Monday, October 17, 2016.

Petitioner's counsel perceived and interpreted the Supreme Court's Order to declare that the days of Wednesday, October 5, 2016 through Friday, October 14, 2016 as holidays, and not to be counted against any time calculation. Petitioner's counsel was grateful for the Court's consideration in light of the fact that the hurricane prevented Petitioner's counsel and staff from accessing the resources and facilities necessary to advance this case. In reliance on the Supreme Court's Order, the Petitioner's counsel did not ask for a further extension but filed the Petition without counting the aforementioned dates against the calculation of time. Pursuant to Rule 263, a "holiday" is not generally included in the calculation of time, and the Petitioner did not count the

“holidays” in this calculation for the Petitioner’s due date.

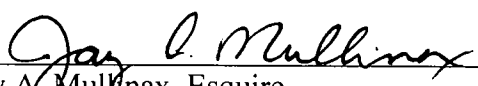
The Supreme Court’s correspondence of November 14, 2016 indicates that it intended a different interpretation to its Order. It’s certainly reasonable to construe that the due date of Petitioner’s Petition, if falling on October 5, 2016 through October 14, 2016, would have been due October 17, 2016. However, it’s also reasonable to interpret that the Order required that October 5, 2016 through October 14, 2016 be counted as “holidays”. Because holidays are not counted as days for these purposes, the ten (10) days were not counted by the Petitioner in computing time. By this interpretation Petitioner’s Petition would not have been due until November 2, 2016. Petitioner’s Petition for Writ of Certiorari was filed on November 2, 2016

CONCLUSION

For the reasons stated, Petitioner respectfully prays that this Court to grant the Petitioner’s Motion to Allow Late Filing of Petition for Writ of Certiorari.

Respectfully submitted,

November 22, 2016


Jay A. Mullinax, Esquire
Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101
Bar No. 68293
Attorney for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2016-002226

RECEIVED

NOV 23 2016

S.C. SUPREME COURT

Estate of Valerie D'Agostino,

Respondent,

v.

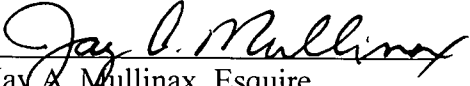
Nicholls & Crampton, P.A.,

Petitioner.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Motion to Allow Late Filing of Petition for Writ of Certiorari on the Estate of Valerie D'Agostino, sent via U.S. Mail, postage prepaid on November 2, 2016, addressed to its attorney of record, Mr. J. Ashley Twombly, Esquire, 311 Carteret Street, Beaufort, SC 29902.

November 22, 2016


Jay A. Mullinax, Esquire
Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101
Bar No. 68293
Attorney for Appellant