EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BETTY FISHER and LISA FISHER, Plaintiff, v. BESSIE HUCKABEE et al Defendants, In the Matter of the Estate of Alice Shaw Baker	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2009-CP-10-3010 **MOTION BY PLAINTIFFS BETTY FISHER and LISA FISHER FOR THE FOLLOWING:** **1) ORDER TO CHANGE VENUE;** **2) ORDER VACATING THE DATE OF TRIAL;** **3) ORDER STAYING ANY AND ALL HEARINGS, INCLUDING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE COURT, ALL INTERESTED PARTIES, AND COUNSEL OF RECORD:

YOU WILL TAKE NOTICE that the undersigned as attorney for the Plaintiffs will move the Court for the following orders:

1) an Order to Change Venue of this case to Beaufort County pursuant to S.C. Code § 15-7-100, S.C. Code § 62-3-201, and S.C. Const. Art. V, § 23 on the grounds that the law and facts mandate transfer based on the previous order and findings of the South Carolina Supreme Court on August 16, 2017 and to ensure that a fair and impartial trial can be heard;

2) an Order vacating the current trial date of October 23, 2017 pending ruling in the South Carolina Supreme Court on Plaintiff's Petition for Writ of Certiorari, *Fisher v. Huckabee*, Case no. 2016-000320, set for oral argument on October 19, 2017;

3) an Order Staying all hearings in the matter, pending transfer of the matter to Beaufort County, including but not limited Defendants' Motion for Summary Judgment pending resolution of this Motion for Order to Change Venue and conclusion of stay in related matter before the South Carolina Supreme Court, *Fisher v. Huckabee*, Case no. 2016-000320, as required by the abatement mandated in S.C. Code § 62-1-303 (b).

This Motion will be based upon the applicable statutory law, regulatory law and case law, upon any Affidavits filed with the Court upon any pleadings of record, upon any and all discovery and upon such further information as may be received by the Court.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By: _____

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ATTORNEYS FOR PLAINTIFF

September 29, 2017

MEMORANDUM IN SUPPORT OF MOTION

FOR ORDERS TO CHANGE VENUE, VACATING THE DATE OF TRIAL AND STAYING HEARING ON ANY AND ALL HEARINGS, INCLUDING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

On or about April 27, 2009, Plaintiffs Betty Fisher and Lisa Fisher (hereinafter "Plaintiffs") commenced this action in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009, to ensure that the assets of the decedent Alice Shaw Baker go to animal charities. After heavily contested pre-trial and appellate filings, this matter is set for trial on a date certain now scheduled for October 23, 2017.

However, Plaintiffs have notified this Court that this matter can not go forward until the related civil actions and probate actions now before the South Carolina Supreme Court are resolved. These appeals may materially impact this case concerning, in part, the wrongful actions of Defendants and their prior counsel Peter A. Kouten, Esquire (hereinafter "Mr. Kouten") and his associates.[1] Mr. Kouten recently was appointed Associate Probate Judge in Charleston County.

On August 16, 2017, the South Carolina Supreme Court sua sponte found that the Charleston County Probate Court was disqualified and ordered the underlying probate actions, *In re Conservatorship/Guardianship of Alice Shaw Baker* ("conservatorship") case no. 2008-GC-10-00088 and *In re Estate of Alice Shaw Baker,* ("estate") case no. 2009-ES-10-378, transferred to Beaufort County.

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[1] Mr. Kouten is Defendant in related action, *Fisher v. Huckabee,* case no. 2012-CP-10-1332, as are all other defendants in this action. Also, to the extent Mr. Kouten is disqualified from his representation of Defendants due to conflict of interest, Jessica Crowley, Esquire, Mr. Kouten's associate is also disqualified, and by implication so is, Mr. Wills.

Due to this transfer and the law and facts in this case, this Civil Action may not be heard on October 23, 2017 and requires the matter be transferred to the Beaufort County Circuit Court for all further proceedings.

Also, as set forth in the S.C. Code § 62-1-303 (b), this matter is in abeyance as a matter of law and by way of Rule 205, SCACR for the related appeal.

Therefore, Plaintiffs respectfully move the court to issue the orders as set forth herein.

II.

STATEMENT OF FACTS

A. Background Facts

On or about April 27, 2009, Plaintiffs Betty Fisher and Lisa Fisher ("Plaintiffs") commenced this action in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009, to ensure that the assets of the decedent Alice Shaw Baker go to animal charities.

Alice Shaw Baker had long been an important member of South Carolina's community.

She was born August 14, 1929 in San Francisco, California. Ms. Shaw-Baker was enlisted in the United States Navy for four years and, during her enlistment, stationed in Charleston, South Carolina. Ms. Shaw-Baker worked for Charleston Memorial Hospital for approximately twenty years until her retirement.

She was a member in good standing of her church. She volunteered her time rescuing animals. She had devoted her life to caring for animals and supporting animal charities.

Plaintiffs allege in this Will Contest/revoked will case that Defendants Huckabee, Slade, and Byrd worked for Ms. Shaw Baker at Charleston Memorial Hospital, and used their working relationship with Ms. Shaw Baker to gain information about her private life, her finances, and her estate plan. Furthermore, Defendants used this information to gain control over Ms. Shaw Baker's mind and her will, and to interfere with the known estate plan that Ms. Shaw Baker had established for the benefit and protection of animals. Also, Plaintiffs allege that Defendants falsely claimed that Slade owned an animal rescue in their scheme to deceive Ms. Shaw Baker.

During these proceedings, the Probate Court appointed Mr. Kouten as *Court Appointed Counsel,* Guardian Ad litem, and visitor to Alice Shaw Baker in the Conservatorship proceedings. Ms. Shaw Baker agreed to the appointment of her great niece Lisa Fisher and was appointed as conservator/guardian in October 2008.

While representing Ms. Shaw Baker, Mr. Kouten began representing the defendants Huckabee, Slade and Byrd even though their interests were adverse to Ms. Shaw Baker. This conflict of interest arose while Ms. Shaw Baker was still alive, **and not merely after her death**. During the entirety of Mr. Kouten's representation, he is alleged to have disclosed Ms. Shaw Baker's confidential information to the current attorneys, W. Westbrook Wills III, Esquire ("Mr. Wills") and Jessica Crowley, Esquire ("Ms. Crowley"), in violation of Rules of Professional Conduct and were actions that were adverse to the wishes of Ms. Shaw Baker.

These actions were discovered after Alice Shaw Baker's death, and resulted in several appeals concerning the disqualification and wrongful acts. Plaintiffs filed another action for

tortuous action of Defendants in related *Fisher v. Huckabee,* case no. 2012-CP-10-1332 ("Civil action").

This matter is before the South Carolina Supreme Court on Petition for Writ of Certiorari, and set for Oral Argument on October 19, 2017. There is also a Petition for Writ of Certiorari in the probate action.

B. Current Status of the Case.

The will contest/revocation matter is set for trial on the date certain of October 23, 2017.

The South Carolina Supreme Court has scheduled oral argument in the related case of *Fisher v. Huckabee,* 2016-000320 for October 19, 2017. This case deals with the conflict of interest of (recently appointed Judge) Peter Kouten, and the related attorneys, Mr. Wills and Ms. Crowley.

On August 16, 2017, the South Carolina Supreme Court sua sponte transferred the underlying probate case, *In the Matter of Alice Shaw Baker* (Cases no. 2008-GC-10-00088 and 2009-ES-10-378) to Beaufort County, before the Honorable Kenneth E. Fulp, Jr. or alternatively to an Associate Probate Judge for Beaufort County.

In said order, Chief Justice Donald W. Beatty found that "Irvin G. Condon, Judge of Probate for Charleston County, and the associate Probate Judges of Charleston County are disqualified from any further hearings". (Attached hereto is a true and correct copy of said order marked as Exhibit A)

Due to the transfer of the underlying case by the South Carolina Supreme Court and the related factual issues before the South Carolina Supreme Court, this case is currently abated and must be stayed.

C. Factual Issues that Demonstrate Transfer is also Warranted to Prevent Prejudice and in the Interests of Justice

On June 29, 2017, Charleston Law School reported on the appointment of Former Counsel Peter Kouten (defendant in related civil action and a crucial witness in the instant action) as an associated probate judge in Charleston County Probate Court. In said article, Presiding Judge of the Probate Court, Judge Condon stated:

> "Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court," said Charleston County Probate Judge Irvin Condon."

(Attached hereto as Exhibit B webpage http://charlestonlaw.edu/alumnus-peter-kouten-appointed- charleston-county-associate-probate-judge)

The evidence demonstrates that at the time adverse rulings were issued by the Probate Court and Plaintiff was seeking disqualification of Mr. Kouten, there was a longstanding and non-disclosed relationship which affected and continues to affect the parties.

For instance, In October 2011, there was a seminar by the South Carolina Bar, entitled UAGPPJA is Coming to South Carolina. In said seminar, Mr. Kouten was a guest speaker at the invitation of Judge Irvin Condon (Attached hereto is a true and correct copy of the Bar program and faculty attending the seminar marked as Exhibit C)

Additionally, public record disclosed that Probate judge, Irvin Condon, appointed Mr. Kouten "special administrator" in the case of *Caldwell v. Clerk of Probate Estate Court Allison.* This was a

heavily litigated case that the plaintiff pro se attempted to have heard by the United States District court. In said case, the plaintiff alleged that the judge had defamed him and issued void orders. *Caldwell* demonstrates a close relationship between Judge Condon and Mr. Kouten which was required to be disclosed to Plaintiffs in this instant case.

After his appointment as associate probate judge, the Chief Justice of South Carolina Donald W. Beatty issued an order that stated:

> "Honorable Peter A. Kouten, Charleston County Associate Probate Judge, may preside over the Charleston County Mental Health Court in the absence of Judge Irvin G. Condon and Judge Tamara C. Curry. Pursuant to this assignment, Judge Kouten will be responsible for administering the program and coordinating the role of the judiciary with the functions of the Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston county General Sessions court, private mental health care providers and the Charleston County Sheriff's Department. Judge Kouten shall be responsible for overseeing all defendants preliminarily determinated to be eligible for the Mental Health Court. "

(Attached hereto is a true and correct copy of said order dated July 28, 2017 marked as Exhibit D).

This authority provided to Mr. Kouten in his duties for the Probate Court also create a limited availability of jurors who won't have access to/or knowledge of his promotion to Judge. When Mr. Kouten is called as a witness in the instant case, Plaintiffs will be unfairly prejudiced by his recent elevation to the bench.

Judge Tamara Curry issued orders in the Probate Court that are currently before the South Carolina Supreme Court and were adverse to Plaintiffs without appropriate findings. These include allegations wherein Judge Curry refused to allow counsel to argue or speak, and precluded presentation of evidence.

Plaintiffs contend that as a matter of law all of these facts, the adverse findings, and the relationship of the parties mandated disqualification by both Mr. Kouten and the Probate Court, and were in violation of Rule 501 SCACR, Code of Jud. Conduct, Canon 3. As such, these facts support Plaintiffs claims that **there is reason to believe that a fair and impartial trial cannot be had in Charleston County and that the ends of justice will be promoted by a change of venue.**

Although this case meets the stringent requirements for transfer under Code Ann § 15-7-100, it is the transfer of the underlying cases to Beaufort County by the South Carolina Supreme Court that takes this out of a discretionary transfer to a mandatory transfer as outlined herein. [2]

III.

TRANSFER OF VENUE IS PROPER UNDER S.C. CODE § 15-7-100 AND § 62-1-303

South Carolina Code Ann § 15-7-100 (1976) provides:

"(A) The court may change the place of trial if:

(1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;

(2) **there is reason to believe that a fair and impartial trial cannot be had there**; or

(3) the convenience of witnesses and **the ends of justice would be promoted by the change**.

(B) When the place of trial is changed, **all other proceedings must be in the county to which the place of trial is changed**, unless otherwise provided by the consent of the

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[2] It has been said that "The Constitution is above any statutory enactment preventing a fair trial, and a statute which limits a change of venue to one application where it is impossible to obtain a fair trial and impartial jury , is unconstitutional to that extent." See *State ex rel. Red Cab, Inc. v. Shelby Circuit Ct.*, 183 N. E. 2d 336 (Ind. Sup. Ct. 1962, dissent; analysis under prior law) .

By way of the South Carolina Supreme Court's Order of Transfer of the Probate Court, there has already been a determination of prejudice. Thus, it is undisputed that under the South Carolina Constitution, thereby transfer is mandated.

> parties in writing duly filed or by order of the court. The pleadings and other papers must be filed or transferred accordingly." (*Id.*, Emphasis added)

Venue must be changed in this case in light of the South Carolina Supreme Court's finding that the Charleston Probate Court is disqualified and that the matter is transferred to Beaufort County Court.

Subsection (B) of § 15-7-100 must apply in that **all other proceedings must be in the county to which the place of trial is changed.** (Emphasis added) Although the underlying Conservatorship case and Probate case are distinct cases, the previous removal to the Circuit Court creates an implicit consolidation of the files and related proceedings. This coupled with the findings of the *Waddell* court below mandate immediate removal.

The court in *Waddell v. Kahdy,* 309 S.C. 1, 419 S.E. 2d 783 (1992) provides that venue was controlled by S.C. Code Ann. § 62-1-303 and § 62-3-201 of the Probate code. In *Waddell,* the court held that since the action was originated in Probate Court, and presumptively removed to the Circuit Code pursuant to S.C. Code Ann. § 62-1-302 (1991), that:

> "When the legislature provided a mechanism to remove certain cases from Probate Court to Circuit Court, they did not specify which venue statute would apply after removal. Because the action remains primarily an action governed by the Probate Code, we hold that the §§ 62-1-303 and 62-3-201 continue to govern in cases removed to the Circuit Court under § 62-1-302 (c) (1991)."

Section 62-1-303 (b) provides that if matters are commenced in more than one court of South Carolina, then the courts shall hold **it in abeyance** until the question of venue is decided, and **if the**

ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court."[3] (Emphasis added)

Since the underlying orders were signed by members of the Probate Court and any and all of the jury pool, including those mentioned under the authority of Mr. Kouten, i.e. "Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston county General Sessions court, private mental health care providers and the Charleston County Sheriff's Department" will make locating a fair and impartial jury next to impossible.

The relationship of any appointed trial judge to the Probate department and Mr. Kouten will require review by Counsel and create an unnecessary cloud over this case.

Finally, the mere knowledge that Mr. Kouten is now a judge while also a witness in this case will give the appearance of validity to his testimony, again, unfairly prejudicing Plaintiffs.

Therefore, based on both § 15-1-700 and the mandatory transfer under § 62-1-303, Transfer is the only way to ensure an impartial and fair trial and jury.

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[3] Section 62-3-201 does not apply herein, because it is based on location of the decedent's residence.

IV.

THIS COURT HAS DISCRETION TO CHANGE OF VENUE UNDER § 15-1-700, HOWEVER TRANSFER IN THIS CASE IS MANDATORY UNDER § 62-1-303.

It is well settled that "South Carolina Courts have interpreted the general statutes providing for changes in venue to require a motion directed to the discretion of the trial court judge, whose ruling will not be disturbed in the absence of a manifest legal error." (See South Carolina Jurisprudence, June 2017, Venue § 24 citing *Durant v. Black river Elec. Co op, Inc.*, 271 S.C. 466, 248 SE 2d 264 (1978); *Cavalier v. Cooley,* 247 S.C. 509, 148 SE 2d 372 (1966).)

In *Matais v. Brown & Brown of South Carolina, Inc.*, 698 S.E.2d 773 (S.C. 2010), the court held that a Motion to change venue is addressed in the sound discretion of the trial judge. (See also *Holroyd v. Requea,* 361 S.C. 43, 603 SE 2d 417 (Ct. App. 2004).)

Mr. Kouten's new role as judge could easily impress a juror, and undermine the prior conduct and his relationship with defendants, his prior role as court appointed attorney, role as visitor, and role as guardian ad litem over the decedent Alice Shaw Baker. Plaintiffs will be sorely harmed if the jurors believe that Mr. Kouten's new job as a judge was an implicit finding of no wrongdoing.

This court's discretion must be weighed against a plaintiff's need for **"a fair and impartial trial"** and that the **"ends of justice would be promoted by the change"** of the trial to the same county as handling the probate matter.

The information set forth above regarding the relationship of Mr. Kouten and The Probate Court is extremely important in evaluating the facts of this case. The rules governing judges mandated earlier disqualification, as the Probate Court appointed Mr. Kouten, knowing him as a friend and clerk without disclosure. As "A judge shall not make unnecessary appointments. A judge shall exercise the power of

appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered."

The Commentary to Section 3C(4) makes clear that "Appointees of a judge included assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation **does not relieve** the judge of the obligation prescribed by Section 3C(4). " (Emphasis added)

The United States Supreme Court has an even more stringent standard for disqualification. Under *Liljeberg, the United States Supreme Court* 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988) the court held that the statute governing disqualification provides "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

There is no doubt that the relationship with Mr. Kouten and the Probate Court must be reasonably questioned. These facts associated with the Probate Court's decisions without factual findings allows a party to question the impartiality of the judges. (See *Ellis v. Procter & Gamble Dist. Co*, 315 S.C. 283, 285, 433 S.E.2d 856, 857 [*Ellis* stands for the proposition that impartiality may be "reasonably questioned when his [judge's] factual findings are not supported by the record."].)

Decisions in both the Circuit Court and in the Probate Court led to the current appeals, now before the South Carolina Supreme Court. These include orders and decisions by Judge Houston and Judge Nicholson of the Circuit Court and Judge Curry of the Probate Court which further supports a change of venue and stay of further proceedings.

As more fully explained in Section III. , the orders of the South Carolina Supreme Court mandate transfer under § 62-1-308 and Plaintiffs respectfully move this Court to issue orders transfer this action as supported by the prior order transferring the probate matters to Beaufort County.

V.

THE MOTION TO CHANGE VENUE IS TIMELY

The time for filing motions for change of venue are not definite. South Carolina courts have upheld change of venue motions made upon the call of the calendar for the term of court and for which the case is docketed for trial. (See *Bryan v. Richardson,* 240 S.C. 92, 124 SE 2d 731 (1962).)

Moreover, a plaintiff may even move after trial has commenced. (See *Royal Crown Bottling Co. v. Chandler*, 228 S.C. 412, 90 SE 2d 489 (1955).)

Court's have emphasized that change of venue is proper at any time. The court in *Willoughby v. Northeastern RR Co,* 46 S.C. 317, 24 SE 388 (1896) found that transfer was proper even after the case was 5 years old and after 2 mistrials.

Also, the court in *Witherspoon v. Spotts & Co,* 227 S.C. 209, 87 SE 2d 1477 (1955) held that transfer was proper even when the case was docketed for trial.

In this case, Defendants can show no prejudice to, or change of position by the delay of making this motion.

The investigation into facts demonstrating that prior counsel/current probate judge had a personal relationship with the very judges issuing adverse rulings was obviously evident to the South Carolina Supreme Court in their August 16, 2017 order which disqualified the entire Charleston County Probate Court.

Additionally, this case has been litigated and heard by several judges in the Circuit Court, all now with potential relationships with Mr. Kouten. Plaintiffs' case has been heavily litigated based on wrongs done individually by and on behalf of Defendants. The allegations by Plaintiffs include accusations that Mr. Kouten was not "faithful to the law" and that he had prejudice against the decedent based on her age. If he had been a judge at the time, these would have been violations of Rule 501, SCACR, Code of Jud. Conduct, Canon 3, and as demonstrated by the South Carolina Supreme Court created a duty by the Probate Court to recuse itself from these proceedings.

Additionally, the current attorneys for Defendants, Mr. Wills and Ms. Crowley, are alleged to have received confidential information as stated in the civil case against Mr. Kouten. Mr. Wills was a classmate of Mr. Kouten, and acted jointly with Mr. Kouten on behalf of defendants in this case. At this time, it is alleged that Mr. Kouten had confidential information from the decedent which he wrongfully disseminated to Mr. Wills and Ms. Crowley. Ms. Crowley was employed by Mr. Kouten as alleged in her Linked in page. (Attached hereto is a true and correct copy of said page marked as Exhibit E.)

All of these factors demonstrate facts and issues which affect the jury trial in this matter. Plaintiffs have a right and obligation to bring this motion to ensure that the procedure towards justice is fair. The procedure in *Waddell* supports Plaintiffs' position and creates a mandatory duty to transfer this case to Beaufort County Circuit Court.

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VI.

VACATING THE TRIAL DATE OF OCTOBER 23, 2017 IS NECESSARY TO CONSIDER THIS MOTION TO TRANSFER VENUE AND TO ABIDE BY THE STAY OF THE APPELLATE CASES

On the docket, is the consent order for a date certain on the trial in this matter, October 23, 2017. However, since the underlying probate matters are transferred to Beaufort County, the law provides for the transfer of this matter as necessary and essential for a fair trial .

Additionally, this matter is stayed, due to the pending appeal in the related matter before the South Carolina Supreme Court, wherein Plaintiffs requested the court to consider disqualification of Mr. Kouten, and as related to his associates in this case, Mr. Wills and Ms. Crowley.

Moreover, Counsel for Defendants has filed a Motion for Summary Judgment which can not be heard by this court. The relationship of Mr. Kouten, as new associate judge, will prevent Plaintiffs from a fair trial. Adverse rulings have been received from the Probate Court and this court which bear on the undisclosed relationship of Judge Condon and Judge Curry with Mr. Kouten.

Finally, Plaintiffs had previously filed appeals to this Circuit Court pursuant to S.C. Code 62-1-308(Supp. 2007) which held that "A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the **circuit court in the same county."** Therefore, any issue relating to the probate would be transferred to the Beaufort County Circuit Court, and it would cause unnecessary confusion to have the case in two Circuit Courts.

Therefore, transferring this matter to the Circuit Court in Beaufort County is mandated, and continuing the trial to accommodate this motion is also required.

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VII.

REMEDY SOUGHT

Based on the above law and facts, Plaintiffs pray that the court will grant this motion in its entirety.

RESPECTFULLY SUBMITTED,

JOHN HUGHES COOPER, P.C.

By:_____

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ATTORNEYS FOR PLAINTIFF

September 29, 2017

The Supreme Court of South Carolina

ORDER

I find that the Honorable Irvin G. Condon, Judge of Probate for Charleston County, and the Associate Probate Judges of Charleston County are disqualified from any further hearings In the Matter of Alice Shaw-Baker (Case No. 2008-GC-10-00088 and 2009-ES-10-378) and therefore are unable to sit as judge of probate in this matter in its entirety.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Kenneth E. Fulp, Jr., Judge of Probate for Beaufort County, or, in the alternative, an Associate Probate Judge for Beaufort County be, and hereby is, appointed as special probate court judge to sit in the above matter in its entirety. As such special probate court judge, the Honorable Kenneth E. Fulp, Jr., or, in the alternative, an Associate Probate Judge for Beaufort County shall have all the powers and duties appertaining to a probate court judge for Charleston County in the handling of the above matter.

Donald W. Beatty
Chief Justice of South Carolina

August 16, 2017
Columbia, South Carolina

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
A

ALUMNUS PETER KOUTEN APPOINTED CHARLESTON COUNTY ASSOCIATE PROBATE JUDGE

Peter Kouten, a member of Charleston Law's first graduating class of 2007, describes becoming an associate probate judge in Charleston County as a "natural progression"

In many ways, Kouten, who was sworn in on June 29, is "coming home" to his new position. Kouten was a law clerk at the court immediately after law school and then practiced solely probate and estate planning for eight years at his firm, the Kouten Law Firm.

"I am honored to be appointed to a position to help people get the care and assistance they need," Kouten said. "Becoming a probate judge seems to be a natural progression from what I was doing as a probate attorney and it is gratifying to help people on a different platform."

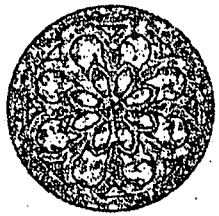
"Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court," said Charleston County Probate Judge Irvin Condon.

As one of four judges, Kouten will preside over all areas of the court, including mental health commitments, adult guardianships, conservatorships, and estate cases. The court also has adult and juvenile drug courts and a mental health court, and will soon start a veteran's court. Kouten spent three years in the Marine Corps and looks forward to being heavily involved with the veteran's court.

Although Kouten's legal career has been a direct path to the probate court, his path towards law school was less direct.

Born in Philadelphia and raised in nearby New Jersey, the 57-year-old Kouten moved to Charleston to follow family tradition and attend The

QUICK LINKS



ABOUT CHARLESTON LAW
APPLY TO THE SCHOOL
SCHEDULE A VISIT
REQUEST INFORMATION

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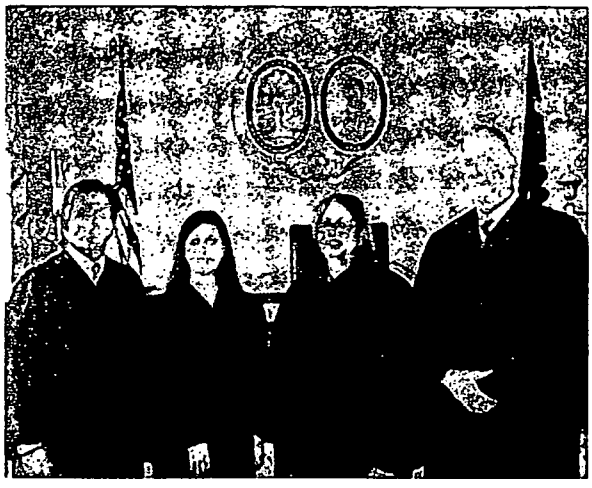
Although Kouten's legal career has been a direct path to the probate court, his path towards law school was less direct.

Born in Philadelphia and raised in nearby New Jersey, the 57-year-old Kouten moved to Charleston to follow family tradition and attend The Citadel. After his third semester, he left and joined the Marine Corps. He later returned to Charleston, graduating from the College of Charleston in1988 and earning a master's degree in business administration from The Citadel in 1992.

With MBA in hand, Kouten formed what would become one of the largest and most successful home inspection companies in Charleston. He put the idea of law school on hold while raising a family with his wife Callie. When Kouten read



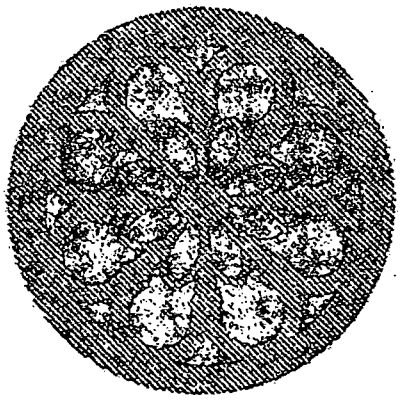
an article about a new law school in Charleston opening, the father of three seized the opportunity and did not look back.

Kouten is grateful for his decision to attend the Charleston School of Law and credits the professors and staff members who mentored him along the way and the school's emphasis on public service. "I have been molded by the unselfishness of those at the Charleston School of Law," he said during his investiture ceremony. "Those who have passed on experience, strength and hope intentionally or by example."

Surrounded by family, friends and colleagues, Kouten celebrated the natural path of his legal career.

Story and photos by Michelle Mensore Condon

QUICK LINKS



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Gmail by Google

John Hughes Cooper <shiplaw@jhcooper.com>

Fw: Fwd: South Carolina Bar Certificate of Completion

1 message

lisa fisher <lfisher6736@yahoo.com> Fri, Sep 29, 2017 at 1:19 PM
To: John Hughes Cooper <shiplaw@jhcooper.com>, John Townsend Cooper <jtc@jhcooper.com>, Lisa Fisher <lfisher6736@gmail.com>

----- Forwarded Message -----
From: lisa fisher <lfisher6736@yahoo.com>
To: L <lfisher6736@yahoo.com>
Sent: Saturday, September 23, 2017 04:44:14 PM PDT
Subject: Fwd: South Carolina Bar Certificate of Completion

Sent from my iPad

Begin forwarded message:

From: <jane.points-brown@scbar.org>
Date: November 17, 2011 at 4:01:59 PM PST
To: <lfisher6736@yahoo.com>
Subject: South Carolina Bar Certificate of Completion
Reply-To: <support@inreachce.com>

Thank you for completing this South Carolina Bar distance education seminar. Save this email for your records. You can also access information about seminars you have taken by logging back into the user account you created before taking this seminar.

Certificate of Completion

South Carolina Bar

Name: Lisa Fisher
Member ID: 192777
Purchase Date: Tuesday, October 18, 2011
Completion Date: Thursday, November 17, 2011
Transaction ID: S201110180493862UFAMSTP3SJ

Course Title: UAGPPJA is Coming to South Carolina
Course Number: DL-381
Duration:
Course Type: Online Seminar
Faculty: The Hon. Irvin Condon, The Hon. Deirdre Edmonds, Eric M. Fish, M. Leigh Flynn, Peter A. Kouten, Franchelle C. Millender, Beth M. Sulkowski

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
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2 pp.

Original Course Provider: South Carolina Bar

Credit Information:&nbs p; 3 Total CLE Credits (No Ethics)

Course Description:
The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act becomes effective in S.C. on January 1, 2011. Enacted to solve difficult questions of jurisdiction, the Uniform Act has been adopted in eighteen states and is pending in seven others.

Originally proposed in 2007 by the National Conference of Commissioners on Uniform State Laws, the Uniform Act outlines communication and cooperation between courts, transfer of proceedings from one state to another and recognition of appointments made in other states.

The Uniform Act is intended to solve those difficult questions of jurisdiction for appointments of guardians and conservators when more than one state is involved.

The S.C. Bar and the Elder Law Committee are pleased to sponsor a three-hour introduction to the Uniform Act, featuring Eric Fish from NCCUSL, Beth Sulkowski from the S.C. Alzheimer's Association and a panel of judges and practitioners.

This is your opportunity to become familiar with the Uniform Act and to be prepared when the new law is implemented in January.

Agenda
Welcome and Opening Remarks
Franchelle C. Millender - Sherrill Roof Millender LLP

Why the Act was needed
Beth M. Sulkowski - Director of Communications & Advocacy
Alzheimer's Association, SC Chapter

Review of the Act
Eric M. Fish - Uniform Law Commission

Panel Discussion, Questions and Answers
Moderator: Franchelle C. Millender
Panel: Eric M. Fish - NCCUSL Legislative Counsel
The Hon. Irvin Condon - Charleston County Probate Court
The Hon. Deirdre W. Edmonds - Horry County Probate Court
Peter A. Kouten - Kouten Law Firm , LLC
M. Leigh Flynn - Law Office of Leigh Flynn, LLC

2017-07-28-02

The Supreme Court of South Carolina

RE: Charleston County Mental Health Court

ORDER

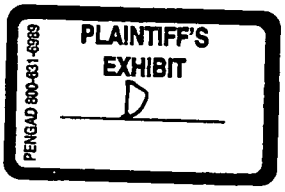
Pursuant to the provisions of S.C. CONST. Art. V, § 4,

IT IS ORDERED that the Honorable Peter A. Kouten, Charleston County Associate Probate Judge, may preside over the Charleston County Mental Health Court in the absence of Judge Irvin G. Condon and Judge Tamara C. Curry. Pursuant to this assignment, Judge Kouten will be responsible for administering the program and coordinating the role of the judiciary with the functions of the Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston County General Sessions Court, private mental health care providers and the Charleston County Sheriff's Department. Judge Kouten shall be responsible for overseeing all defendants preliminarily determined to be eligible for the Mental Health Court.

This order takes effect immediately and remains in effect unless amended or rescinded by the Chief Justice.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
July 28, 2017



Jessica Crowley

Attorney at Law at Crowley Law Firm, LLC - Estate Planning & Probate Administration

Charleston, South Carolina | Law Practice

315 connections

Current	Crowley Law Firm
Previous	Kouten Law Firm, LLC - Estate Planning, Ninth Circuit Office of the Public Defender, Charleston School of Law
Education	Charleston School of Law
Websites	Kouten Law Firm

Summary

Charleston, SC Attorney working at an Estate Planning Law Firm. We focus on Asset Protection, Estate Planning, Wills, Trust and Probate Administration, Elder Law, Probate Court, Conservatorships and Guardianships in Charleston County, Berkeley County, and Dorchester County. Please call 843-789-9614 for a free consultation.

http://www.koutenlaw.com/

Experience

Attorney at Law

Crowley Law Firm

March 2017 – Present (7 months)

Estate planning, Estate administration and Adult Guardianships & Conservatorships

Attorney at Law

Kouten Law Firm, LLC - Estate Planning

March 2014 – February 2017 (3 years)

Estate Planning, Probate and Trust Administration, Mediation, Elder Law, Advance Directives, Guardianships and Conservatorships, Special Needs Planning, Asset Protection in Charleston, SC. Serving Charleston County, Berkeley County and Dorchester County.

Extern

Ninth Circuit Office of the Public Defender

January 2013 – May 2013 (5 months) | Charleston, South Carolina Area

Worked on all phases of case preparation for multiple General Sessions cases. Researched and drafted legal memoranda, pre-trial motions, briefs, professional and client correspondence. Performed new client interviews, both in the jail and in the office. Developed legal defenses and trial tactics to assist attorneys in trial preparation. Interviewed witnesses and developed direct- and cross-examinations for trial. Engaged in negotiations with and examination of arresting officers during preliminary hearings.

Student

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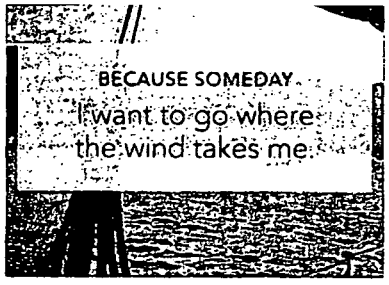

Law Clerk
Ninth Circuit Office of the Public Defender
May 2012 – August 2012 (4 months)

Legal Research and Writing Teaching Fellow
Charleston School of Law
August 2011 – May 2012 (10 months)

Edited research memos and briefs of first year Legal Research, Analysis and Writing students and gave feedback on how to improve writing. Trained students how to use the library, Westlaw, Lexis-Nexis, and other research tools to perform legal research. Developed and presented instructional research and citation workshop for first year students. Assisted professor with class preparation and instruction.

Law Clerk
Rosen Law Firm
June 2011 – September 2011 (4 months) | Charleston, South Carolina Area

Performed legal research and assisted with trial preparation in domestic, personal injury, and medical malpractice litigation. Drafted memoranda, pre-trial motions, briefs, and orders. Interviewed witnesses, potential expert witnesses, and prospective clients. Performed extensive research and preparation for depositions of expert witnesses in complex domestic litigation.

Judicial Observation Program Participant
The Honorable Gordon B. Jenkinson
May 2011 – June 2011 (2 months)

Observed all stages of courtroom proceedings in Family Court. Researched and drafted memorandum on jurisdictional question. Assisted with preparation of legal materials for hearings.

Therapist, Staff Supervisor, Program Developer
Applied Behavior Analyst
April 2002 – August 2010 (8 years 5 months)

Created client-specific programs for treatment of children with Autism. Utilized operant conditioning in generalized settings to foster practical skills in the child. Supervised and trained Applied Behavior Analysis Therapists. Extensive training to include: Positive Behavioral Intervention, Therapeutic Crisis Intervention, and Advocacy for Children and Families.

Honors & Awards

CALI Award for highest grade in Property

CALI Award for highest grade in Legal Research, Analysis and Writing

Acedemic Excellence Award in English

Academic Excellence in Spanish

Best Transfer Student

Education

Charleston School of Law

Juris Doctor, Law, Cum laude

2010 – 2013

Cum Laude
Activities and Societies: Federal Courts Law Review, Managing Editor; Criminal Law Society, Member; Children's Advocacy and Family Law Society, Member; DACA Immigration Clinics, Volunteer; Performed over 600 hours of pro bono work

College of Charleston

Bachelor of Arts (B.A.), English Language and Literature/Letters /Creative Writing

2007 – 2009

Publications: Short Fiction, The Miscellany, Spring 2008; Short Fiction & Poem, The Miscellany, Spring 2009; Poem, Illuminations: Journal of Contemporary International Poetry, Summer 2011

Groups

Estates and Elder La... **Trust and Estate Law...** **Linking Charleston, SC** **ABA Section of Real ...**

Criminal Defense Att... **Estate Planning** **Elder Law | Elder Car...** See 5 more

CERTIFICATE OF SERVICE 2009-CR-10-3010

I hereby certify that we served counsel for all parties in this action with a copy of the forgoing Motion for Change of Venue and Exhibits by first class mail, except by request of Assistant Attorney General we have served her by email, all on October 2, 2017.

John Hughes Cooper

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2009-CP-10-3010
	)	
	)	
Betty Fisher et al	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**AFFIDAVIT OF LISA FISHER**
	)	**IN SUPPORT OF MOTION TO**
Bessie Huckabee et al	)	**CHANGE OF VENUE**
	)	
Defendants,	)	
	)	
In the Matter of	)	
Alice Shaw-Baker.	)	
	)	

PERSONALLY APPEARED, Lisa Fisher, who, first being duly sworn, deposes and says:

1. My name is Lisa Fisher.

2. I am a citizen of the United States, over 18 years of age, and of sound mind.

3. The sources of my information and the grounds for my beliefs herein are my personal knowledge and the documents in my possession.

4. I am a licensed attorney in good standing in the State of California.

5. **BACKGROUND FACTS KNOWN BY AFFIANT:** On or about April 27, 2009, My mother Betty Fisher and I commenced this action in the Charleston County Probate Court and removed it to the Charleston County Court of Common Pleas on May 13, 2009, to ensure that the assets of our aunt/great aunt, respectively, Alice Shaw Baker go to animal charities.

6. She was born August 14, 1929 in San Francisco, California. Ms. Shaw-Baker was enlisted in the United States Navy for four years and, during her enlistment, stationed in Charleston, South Carolina. Ms. Shaw-Baker worked for Charleston Memorial Hospital for approximately twenty years until her retirement.

7. She was a member in good standing of her church. She volunteered her time rescuing animals. She had devoted her life to caring for animals and supporting animal charities.

8. We alleged in this Will Contest/revoked will case that Defendants Huckabee, Slade, and Byrd worked for Ms. Shaw Baker at Charleston Memorial Hospital, and used their working relationship with Ms. Shaw Baker to gain information about her private life, her finances, and her estate plan. Furthermore, Defendants used this information to gain control over Ms. Shaw Baker's mind and her will, and to interfere with the known estate plan that Ms. Shaw Baker had established for the benefit and protection of animals. Also, Plaintiffs allege that Defendants falsely claimed that Slade owned an animal rescue in their scheme to deceive Ms. Shaw Baker.

9. The Probate Court appointed Mr. Kouten as *Court Appointed Counsel,* Guardian Ad litem, and visitor to Alice Shaw Baker in the Conservatorship proceedings. Ms. Shaw Baker agreed to my appointment and I was appointed as conservator/guardian in October 2008.

10. While representing Ms. Shaw Baker, Mr. Kouten began representing the defendants Huckabee, Slade and Byrd even though their interests were adverse to Ms. Shaw Baker. This conflict of interest arose while Ms. Shaw Baker was still alive, **and not merely after her death**. During the entirety of Mr. Kouten's representation, he is alleged to have disclosed Ms. Shaw Baker's confidential information to the current attorneys, W.

Westbrook Wills III, Esquire ("Mr. Wills") and Jessica Crowley, Esquire ("Ms. Crowley").

11. These actions were discovered after Alice Shaw Baker's death, and resulted in several appeals concerning the disqualification and wrongful acts. My mother filed another action for tortious action of Defendants in related *Fisher v. Huckabee,* case no. 2012-CP-10-1332 ("Civil action").

12. This matter is before the South Carolina Supreme Court on Petition for Writ of Certiorari, and set for Oral Argument on October 19, 2017. There is also a Petition for Writ of Certiorari in the probate action.

13. The will contest/revocation matter is set for trial on the date certain of October 23, 2017.

14. The South Carolina Supreme Court has scheduled oral argument in the related case of *Fisher v. Huckabee,* 2016-000320 for October 19, 2017. This case deals with the conflict of interest of (recently appointed Judge) Peter Kouten, and the related attorneys, Mr. Wills and Ms. Crowley.

15. **CURRENT FACTS IN SUPPORT OF MOTION:** On August 16, 2017, the South Carolina Supreme Court *sua sponte* transferred the underlying probate case, *In the Matter of Alice Shaw Baker* (Cases no. 2008-GC-10-00088 and 2009-ES-10-378) to Beaufort County, before the Honorable Kenneth E. Fulp, Jr. or alternatively to an Associate Probate Judge for Beaufort County.

16. In said order, Chief Justice Donald W. Beatty found that "Irvin G. Condon, Judge of Probate for Charleston County, and the associate Probate Judges of Charleston County are disqualified from any further hearings". (Attached hereto is a true and correct copy of said order marked as Exhibit A)

17. In reviewing the facts for this order, I discovered that On June 29, 2017, Charleston Law School reported on the appointment of Former Counsel Peter Kouten (defendant in related civil action and a crucial witness in the instant action) as an associated probate judge in Charleston County Probate Court. In said article, Presiding Judge of the Probate Court, Judge Condon stated:

> "Having known Peter as a friend, a law clerk, and a practicing attorney for many years, he has the experience, demeanor and compassion to be an excellent judge. We are glad to have him at the court," said Charleston County Probate Judge Irvin Condon."
>
> (Attached hereto as Exhibit B is a true printout of the webpage http://charlestonlaw.edu/alumnus-peter-kouten-appointed-charleston-county-associate-probate-judge)

18. In both the Probate Court and previous Circuit court rulings, the acting judges made adverse rules. At that time, we were seeking disqualification of Mr. Kouten. At no time did Mr. Kouten or the Probate Court disclose their relationship.

19. During the course of discovery, I also learned that in October 2011, there was a seminar by the South Carolina Bar, entitled UAGPPJA is Coming to South Carolina. In said seminar, Mr. Kouten was a guest speaker at the invitation of Judge Irvin Condon (Attached hereto is a true and correct copy of the Bar program and faculty attending the seminar marked as Exhibit C)

20. I further learned through public record disclosed that Probate judge, Irvin Condon, appointed Mr. Kouten "special administrator" in the case of *Caldwell v. Clerk of Probate Estate Court Allison.* This was a heavily litigated case that the plaintiff pro se attempted

to have heard by the United States District court. In said case, the plaintiff alleged that the judge had defamed him and issued void orders.

21. After his appointment as associate probate judge, the Chief Justice of South Carolina Donald W. Beatty issued an order that stated:

> "Honorable Peter A. Kouten, Charleston County Associate Probate Judge, may preside over the Charleston County Mental Health Court in the absence of Judge Irvin G. Condon and Judge Tamara C. Curry. Pursuant to this assignment, Judge Kouten will be responsible for administering the program and coordinating the role of the judiciary with the functions of the Charleston/Dorchester Community Mental Health Center, Charleston County Magistrate's Court, City Municipal Courts located in Charleston County, Charleston county General Sessions court, private mental health care providers and the Charleston County Sheriff's Department. Judge Kouten shall be responsible for overseeing all defendants preliminarily determinated to be eligible for the Mental Health Court. " (Attached hereto is a true and correct copy of said order dated July 28, 2017 marked as Exhibit D).

22. Judge Tamara Curry issued orders in the Probate Court that are currently before the South Carolina Supreme Court and were adverse to Plaintiffs without appropriate findings. These include allegations wherein Judge Curry refused to allow our attorney John Hughes Cooper to argue or speak, and precluded presentation of evidence.

23. Additionally, the current attorneys for Defendants, Mr. Wills and Ms. Crowley, are alleged to have received confidential information as stated in the civil case against Mr. Kouten. Mr. Wills was a classmate of Mr. Kouten, and acted jointly with Mr. Kouten on behalf of defendants in this case. At this time, it is alleged that Mr. Kouten had confidential information from the decedent which he wrongfully disseminated to Mr. Wills and Ms. Crowley. Ms. Crowley was employed by Mr. Kouten as alleged in her

Linked in page. (Attached hereto is a true and correct copy of said page marked as Exhibit E.)

24. This affidavit is filed in support of Motion for Order to Change Venue, Vacate Trial Date, and Stay all proceedings.

25. Further affiant sayeth naught.

Lisa Fisher

See Attached Notary -7

Long Beach, California

September 29, 2017

[See Attached Notarization]

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Los Angeles

Subscribed and sworn to (or affirmed) before me on

this **29th** day of **September**, 2017,

by **Lisa Fisher**

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

ANGEL FERMIN SANCHEZ
Notary Public - California
Los Angeles County
Commission # 2205590
My Comm. Expires Jul 16, 2021

Signature

(seal)

CERTIFICATE OF SERVICE 2009-CP-10-3010

I hereby certify that we served counsel for all parties in this action with a copy of the forgoing Affidavit of Lisa Fisher by first class mail, except by request of Assistant Attorney General we have served her by email, all on October 2, 2017.

John Hughes Cooper