

THE STATE OF SOUTH CAROLINA

In the Court of Appeals  
Appellate Case No.: 2018-01751

APPEAL FROM RICHLAND COUNTY  
Perry H. Gravely, Circuit Court Judge

Court of Common Pleas  
Case No. 2018-CP-40-0963

Austin Woods Apartments,  
v.  
Marie Assa'ad-Faltas, MD, MPH,

Respondent,  
  
Appellant.

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**RESUBMITTED/UPDATED MOTION TO APPOINT COUNSEL (compliance with deficiency letter)  
WITH SUGGESTION THAT APPOINTED COUNSEL ACT AS STAND-BY COUNSEL  
AND/OR BE APPOINTED FOR THE LIMITED SCOPE OF SEEKING REMAND  
TO THE CIRCUIT COURT TO SETTLE THE RECORD AND OTHER MATTERS**

Having, on 12 September 2018, filed and served *within the body of* her Notice of Appeal a motion for appointment of counsel, and having thereafter received a deficiency letter from the Clerk of this Court, **Appellant hereby resubmits her motion for appointment of counsel to represent her on this appeal.** She resubmits that appointment of counsel, in these unusual circumstances where Appellant is unable to afford counsel but is required to be represented or assisted by one, **is needed to ensure equal protection of the laws and meaningful access to the courts.** Appellant adds that, given lower-court-clerk-admitted clerical errors below both in styling the case and in failing to secure a timely and complete return from the magistrate, **even were this appeal decided on limited procedural issues of the Circuit's Court's mis-styling the case and applying incorrectly-heightened requirements for service of the notice of appeal from magistrate court to circuit court, a correct appellate decision on the procedural requirements would benefit all this State's court clerks and litigants in summary court.** Thus, **appointment of counsel in this important case would promote the public interest as further explained below.**

The U.S. Supreme Court ("SCOTUS") holds that those states using appeals as integral to the adjudicative process **must relieve civil** indigent appellants of the filing and record preparation costs where the substance affects important right. *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Specifically in appeals from residential eviction, state may not irrationally burden a tenant appellant. *Lindsey v. Normet*, 405 U.S. 56 (1972). Shelter (with food, water and clothing) is so basic a need that it is considered a basic human right guaranteed by the international treaties to which the U.S. is signatory. So, *M.L.B., supra*, would cover termination of shelter. Also, *Turner v. Rogers*, 564 U.S. 431 (2011), while not requiring the *ex ante* appointment of a lawyer *in civil cases*, still requires more due process (which *may* include appointment of counsel depending on the needs of the case) than Petitioner Turner had received in South Carolina's courts before being found in *civil* contempt. Appellant here labors under unclear and ever-shifting appellate orders which *may* subject her to contempt if she advocates *pro se*.

In support of her idea that appointed counsel act as stand-by, Appellant quotes below (with correction of typos) her 20 September 2018 PUBLIC COMMENT published and available at <https://www.sccourts.org/whatsnew/publicCommentsLimitedScopeRepresentation.pdf>:

**To: South Carolina Access to Justice Commission**  
**limitedscopecomments@sccourts.org**

Re: Public Comment objecting to the ban on hybrid representation

I support the sensible, realistic, and practical proposed changes which would make access to justice more affordable to clients who can handle parts or most of their own cases, cannot afford a lawyer for the entire case, but need special expertise in one area of the case.

I object only to the senseless continued treatment of "hybrid representation" as if it were the evil of all evils. A brief explanation follows.

At the threshold, all representation by a multi-lawyer firm or by a team of lawyers is essentially "hybrid representation" in that more than one lawyer may and do handle different parts of the case. Indeed, "hybrid representation" is *mandatory* in death penalty cases where two lawyers are guaranteed to the same case.

Equal protection and the rules of ethics giving the client control over the purpose of representation require that hybrid representation not be vilified but be available.

**Simply put, if a client may be represented by a team of two lawyers in the same case, why may a client not be represented by a team consisting of one lawyer and one non-lawyer advocate (the client)?**

**Also, the fact that the Constitution may not *guarantee* hybrid representation by name does not mean that the Constitution bans it.** What stands against "hybrid representation" in South Carolina is an antiquated tradition as "curious" as the one behind the now-defunct "last argument rule." *See, e.g., State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).

Also, federal courts have consistently approved of hybrid representation and left its use to the discretion of the trial court. *See, e.g., Locks v. G.W. Sumner*, 703 F.2d 403 (9th Cir. 1983):

The Supreme Court and this circuit have recognized the efficacy of hybrid representation to aid pro se defendants and protect the integrity of the trial process. *Mayberry v. Pennsylvania*, 400 U.S. 455, 467-68, 91 S. Ct. 499, 505-06, 27 L. Ed. 2d 532, 541 (1971) (Burger, C.J., concurring); *Faretta v. California*, 422 U.S. 806, 834-35 n. 46, 95 S. Ct. 2525, 2541 n. 46, 45 L. Ed. 2d 562, 581 (1975); *United States v. Kimmel*, 672 F.2d 720, 721 (9th Cir. 1982); *United States v. Coupez*, 603 F.2d 1347, 1351 (9th Cir. 1979); see *United States v. Odom*, 423 F.2d 875, 876 (9th Cir. 1970). Neither court has decided, though, that a pro se defendant has an absolute right to advisory counsel. The Tenth Circuit has held that the right to "standby" counsel,<sup>[footnote 3]</sup> a type of advisory counsel, is not absolute, but is within the sound discretion of the trial judge. *United States v. Gigax*, 605 F.2d 507, 516-517 (10th Cir. 1979).

[note 3] "Standby" counsel refers to the situation where a pro se defendant is given the assistance of advisory counsel who may take over the defense if for some reason the defendant becomes unable to continue. *See Mayberry, supra; United States v. Kelley*, 539 F.2d 1199, 1201, n. 3 (9th Cir.), cert. denied, 429 U.S. 963 [] (1976).

*See also U.S. v. Pinkey*, 548 F.2d 305 (10th Cir. 1977) (hybrid representation within court's discretion); *U.S. v. Hill*, 526 F.2d 1019 (10th Cir. 1975) (court may allow hybrid representation); *U.S. v. Bennett*, 539 F.2d 45 (10th Cir.) (court has discretion to permit hybrid); *U.S. v. Halbert*, 640 F.2d 1000, 9th Cir. 1981) (hybrid representation may be allowed); *U.S. v. Domingo Lopez-Osuna*, 242 F.3d 1191 (9th Cir. 2001) (quoting *Locks, supra*, with approval); and *U.S. v. Abrams*, Case No. 3:14-cr-00069-MMD-WGC., United States District Court, D. Nevada, 3 February 2016 ORDER of MIRANDA M. DU, District Judge, allowing hybrid representation and delineating role of stand-by counsel.

Therefore, the proposed language quoted hereunder should be modified as shown by the strike-through:

[(Rule 1.2 (c)) [8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other

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law. See, e.g., Rules 1.1, 1.8 and 5.6. For example, a lawyer who is appointed as counsel may not seek to limit the scope of representation in that matter, and any agreement between the lawyer and the client to provide limited scope representation may not result in hybrid representation in the filing of documents or the conduct of hearings or trials.

Thanks for considering my public comment and God bless./S/Marie Assa'ad-Faltas, MD, MPH

Appellant invites this Court's attention to the first of the two lower court orders here appealed being *totally incorrectly* styled with her as the plaintiff while the second is *partially* correctly styled with her as a defendant. This partial correction followed Appellant's bringing to Ricland County's Clerk of Court's attention § 18-1-120, SC Code of Laws, which provides *in toto*:

**SECTION 18-1-120. How parties shall be designated on appeal.**

**The party appealing shall be known as the appellant and the adverse party as the respondent. *But the title of the action shall not be changed in consequence of the appeal.*** [italics added]

Appellant filed below a motion for relief from judgment due to clerical error per Rule 60(a), SCRPC, which motion remains unheard. She seeks remand for it to be heard and for the magistrate's return to be completed with all original color photos admitted as trial exhibits.

Appellant certifies to this Court that she has so far diligently sought representation from at least six different lawyers/law firms but was unable to secure representation; she suspects that some courts' public displeasure with her dissuades most lawyers from *voluntarily* representing her. This factor would be eliminated by a court order appointing counsel.

WHEREFORE, counsel should be represented for this meritorious and important-to-the-public case either on a plenary basis or on a limited-scope (for motions to remand) or a stand-by basis. Were this motion denied, Appellant should receive clear directions as to her options *within her abilities* to still have equal *meaningful* access to the courts.

Respectfully submitted on October 5, 2018

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Defendant/Appellant *pro se* for purposes of this submission  
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**CERTIFICATE OF SERVICE OF THE RESUBMITTED/UPDATED MOTION TO APPOINT COUNSEL**

I certify that, on 5 October 2018, I served this RESUBMITTED/UPDATED MOTION TO PROCEED *IFP* on Respondent, Austin Woods Apartment, by hand-delivering a copy of it to Austin Woods Apartments' Rental Office located at 7648 Garners Ferry Road, Columbia, SC 29209, and there and then handing it to a person of sound age and discretion and known to me to be an agent of Austin Woods Apartments, all God so willing.

October 5, 2018

Marie-Thérèse Assa'ad-Faltas, MD, MPH, Defendant/Appellant *pro se* for purposes of this submission  
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