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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1:Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

From: Wake County

Case: #16-E-1390

IN THE MATTER OF THE ESTATE OF: REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate) (additional Wake County filings pending #18-CVS-013119, special hearings and estate filings #18 SP1746 (foreclosure), #17-SP-1397 (petition for administrator)), Petition #17SP000769 File No. From 06-E-1397 (this 'E' number was provided with Petition and might be incorrect)

Appellant's [Unconsented] Motion to Mediation/Arbitration for 60 days and Stay brief for 30 days after that ends and until September 2, 2022

To the honorable court of appeals of North Carolina:

Why the mediation/arbitration is required

1. Appellant/Caveator2, Kathy R. Allen, hereby requests a 60-days for the parties to mediate/arbitrate this appeal. Appellees' attorney on 05-02-2022 told Appellant that the party Arthur L. Allen because he is deceased was/is not being represented in this appeal—seemingly just ignoring he existed and that the claims against him exists (or his own estate exists). This action began long before Arthur L. Allen passed, and by at least N.C. App. Rule 38 substitution because of death would be required not to ignore that there are claims against him as lawyer Godwin suggests (*infra*).

2. This by the attorney seems incorrect and by N.C. App. Rules the Appellant wishes to have time to mediate and arbitrate for the appeal considering the proposed is illogical for this death and to the claims, and also as a family matter. Because this deceased member is the Appellant's oldest brother and his Superior Court lawyer (Anthony Klish) is also a

party to the lawsuit and this appeal. But also this will allow the parties, lawyers and Appellant to discuss and view more about this substitution and the lawsuit. A different lawyer (Anthony Klish) did the Wake County Superior Court case and a different lawyer for this appeal was provided as attorney (C. Jordan Godwin). The civil action seemingly has some 'gaps' in the timeline also for it for Arthur's substitution and lack of attention to it for the case.

3. Being so this motion for mediation/arbitration is being filed. This can be provided as N.C. App. court-appointed mediation/arbitration rules *sua sponte* and submitted to the appropriate N.C. App. court division for it and if not as personal/private mediation/arbitration among the parties. In doing so the Appellant's June 2, 2022 brief then would be due 30 days after this mediation/arbitration period and by September 3, 2022 if that mediation/arbitration does not prove fruitful. Granting this motion does not burden either party and would be useful for the appeal matter.

Requested other party consent

4. Appellant sent this motion for consent to the other party on 05-16-2022 approx. 2:00pm EST with a copy of it and indicated if they do or have not replied by 4:00pm EST tomorrow May 17, 2022 at 2:00pm EST the Appellant will file the motion [Unconsented]. So time for mediation/arbitration and as a right is being requested as *supra*.

Respectfully submitted this the 17th day of May, 2022.

s/ Kathy R. Allen (*Pro Se*)
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10th DISTRICT
NORTH CAROLINA APPELLATECOURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen
v.
Appellees Respondent 1:Propounder 1
Arthur L. Allen (Deceased)
Respondent 2: Propounder 2 [sic] Steve R. Allen
Respondent 3: Propounder 3 Anthony A. Klish
Arthur L. Allen et. al.[sic]

) From: Wake County Case: #16-E-1390
) IN THE MATTER OF THE ESTATE OF:
) REBECCA BOWDEN ALLEN
) JOHNSON Deceased Case #16-E-001390
) (caveat for estate) (additional Wake
) County filings pending #18-CVS-013119,
) special hearings and estate filings #18
) SP1746 (foreclosure), #17-SP-1397
) (petition for administrator)), Petition
 #17SP000769 File No. From 06-E-
 1397 (this 'E' number was provided with
 Petition and might be incorrect)

APPELLANT'S OPPOSITION TO APPELLEES' ATTORNEY GODWIN
06-03-2022 TO WITHDRAW AS ATTORNEY FOR ARTHUR L. ALLEN (APPELLEE1)

To the honorable court of appeals of North Carolina:
Why this Opposition to Appellees' Attorney Godwin to withdraw as Attorney for
Artur L. Allen (Appellee1)

1. Appellant/Caveator2, Kathy R. Allen, is litigating *pro se* and in viewing FRAP Rule 27 it provides for opposition to a motion for a response in 10 days and also by N.C. App R. 37(a) and seems appropriate to filing this opposition, and hereby requests that attorney Godwin's motion to withdraw as Appellee1's attorney be and must be rescinded and corrected, and a Rule 38 substitution provided for him. This is because it is clear Attorney Godwin he and the Wake Superior Court attorney Anthony A. Klish (Appellee3) are providing incorrect filings to the appellate court on Appellee1 who the Appellant was told passed (by death) himself o/a December 2020. Appellee1 is the Appellant's oldest brother and long before the November 16, 2021 hearing that this appeal is for began was a party and one of the main ones (Propounder1) for this Caveat filed in January 2020 and to the Appellant's other sibling's (Caveator1) Caveat o/a July 2017.

2. It is clear Appellee3 should have provided before the November 16, 2021 hearing by local Superior Court Rule 19(a) (2011). “A person is united in interest [, pursuant to Rule 19 of the Rules of Civil Procedure,] with another party when that person's presence is necessary in order for the court to determine the claim before it without prejudicing the rights of a party before it or the rights of others not before the court.” But not as are attorney Godwin and Appellee3 to try to argue he is ‘dead’, *so big deal*—and we will just ignore Appellee1 and the claims against him—but at the same time purporting Appellee1 has his own estate matters.

3. When attorney Godwin filed two notices of representation on 04-19-2022 and 04-21-2022 (correcting the 1st on to add a cc: for Appellee1’s wife). On 05-04-2022 after the Appellant had to file for the 1st extension to file the brief on 05-01-2021 the Appellant began sending E-mails to Godwin about the appeal. Below low are the more pertinent E-mails to Appellee1’s substitution, but there are others that Appellant change make available to the court to help know why attorney Godwin is being less than correct and causing delays to the appeal as to Appellee1’s passing.

4. 05-04-2022 - 2:16pm EST [Appellant] saying: “....**Also I will say your notice of representation has that you are representing** Steve and Anthony, but there is another party Arthur Allen as in the defendants for the case who should be represented, so you or the Raleigh office should be providing for him in your replies and update this accordingly. Can you also tell me how you in Fayetteville, NC a non-Wake County office became the attorney of record for this, who retained you, and why you refiled your notice of representation to cc: [Appellee1’s wife]. In addition there should be cc: to another Raleigh, NC Caveator1 whose name I do not see on your cc: list, but I included in the filing and motion. I will look to file the brief by the due date....”

5. 05-04-2022 - 3:07pm EST Godwin replied saying “....Second, Arthur Allen is, unfortunately, deceased, which makes it quite impossible for anyone to update him; plus, his estate has not hired me to represent it in any capacity. Please refer to my Amended Notice of Appearance and the rule(s) cited therein for your question regarding

[Appellee1's wife]. **Comments [Appellant]:** This was a courtesy inquiry to you about [Appellee1], and you should find the proper party and do due diligence and get updated on this as he is a party and is some of the inconsistencies of this case as represented. As I see it Arthur Allen remains a party and should so be included as represented by you and Anthony Klish. I know Mary Flagler is his wife, and he is a party who must be represented (and that is the case)...."

6. 05-16-2022 – 3:51pm EST at last two weeks after 05-04-2022 [Appellant] sent an E-mail saying:” See subject and comments below in red. Also w[h]o is Karen Kueny in the E-mail you sent.

7. 05-16-2022 4:05pm EST ” I did not get your reply to the E-mail below in red comments, and also was asking who is Karen [and on Appellee1's substitution]”.

8. 05-23-2022 “ I did not receive your reply to the E-mail below sent 05-20-2022 on if you would file your reply to the request consent for the mediation/arbitration motion. Being so today I filed the attached 2nd motion for extension to file the brief. Your courtesy copy is attached....”

9. As above there are other E-mails to attorney Godwin, but are not included above,

but then on Friday 06-03-2022 a month out attorney Godwin filed a withdraw motion that

said: “ ...Appellee1 was deceased...[Godwin] is not representing his estate...his

[Godwin's] 04-19-2022 notice of appearance was erroneously filed and the 04-21-2022

notice of appearance was just for Appellee2 and Appellee3..[the withdrawal] should be

granted for good cause and the interest of justice...” See attorney Godwin's 06-03-2022

motion to withdraw. In addition Appellees have caused the Appellant a large monetary

loss in the Superior Court case to their conduct as the Appellant brief will show and doing

so ‘without a word’ to the judge(s) about it's true status of the Caveat matter. Being so see

SMITH v. BRYANT No. 685. 141 S.E.2d 303 (1965).. 264 N.C. 208 [and newer cases] “....,

the lawyer owes the duty to perfect his withdrawal in time to prevent the necessity of a

continuance of the case. "An attorney at law is a.... officer of the court with an

obligation...[to]...his clients, for the office of attorney at law is indispensable to the

administration of justice....”, which their purported argument for withdrawn without a

substitution fails.

10. That being said attorney Godwin and Appellee3 have provided incorrectly how Appellant1 should be represented, but it is a substitution by Rule 38 that both attorney Godwin and Appellee3 (the Wake Country attorney for this Caveat appeal) should provide it not by R. 33 and R. 38 to just ignore the claims against Appellee1 in this court and in the November 16, 2021 hearing—that is also among the improper conduct to the appeal and Appellee3's failure. See *Disciplinary Hearing Comm'n, N.C. State Bar v. Frazier*, 141 N.C. App. 514, 540 S.E.2d 758 (2000) (misappropriation of client funds, advising client not to attend hearing, and pressuring witness to recant prior truthful testimony);....”

11. It is clear attorney Godwin delayed now for at least three weeks since the Appellant sent the 05-04-2022 E-mail to him about Appellee1 indicating he was still a party to the case—and both he and Appellee3 have not agreed to continue not doing so and filing this incorrect withdraw motion instead of providing a R. 38 substitution. If Appellee1 has an estate using that as their argument Appellee3 (Anthony Klish—his Superior Court attorney) further concedes he misrepresented this to the court in the Superior Court case and continued it in the November 16, 2021 hearing, which this appeal's Order is for and are among the ‘questions of material facts’ for the appeal and as provided to attorney Godwin on 05-04-2022. The withdraw Order must be rescinded and by R. 38 provide substitution instead i.e., attorney Godwin's and his appeal case client (Appellee3 as the trial court attorney) is both their responsibility to do before the appeal and in the 11-16-2021 hearing—thus misrepresenting this substitution was required (at the time) to Judge Rozier and now in the appeal, and are all questions for the appeal brief. *Id* SMITH provide a new trial to a withdrawal “....and that [plaintiff] had negligently or contumaciously failed to attend to her case...”, but that also is not the Appellant's case—

but Appellees and Appellee3's who should provide the correct their not providing for Appellee1 as party and in his passing.

12. This R. 38 substitution is a pertinent question for inclusion on appeal and in the brief—and for justice to the Appellant to include the proper party to the appeal and must be corrected now before the brief is filed—not to withdraw inappropriately with no N.C. App. R. 38 substitution for Appellee1. The Appellant requests that the court rescind the 06-06-2022 Order and that is what will serve justice—indeed there was no error by attorney Godwin to filing the notice of representation—except to misrepresent this to this court—just again both attorney Godwin and Appellee3's misrepresentations about the required R. 38 substitution in both this and the Superior Court hearing. See *In re Hunoval*, 294 N.C. 740, 247 S.E.2d 230 (N.C. 1977) [and newer cases] “.... [Attorney's] dereliction occurred in a matter pending before this Court and the underlying facts constituting the dereliction are not in dispute and have, indeed, been admitted in writing by him....” In additional Appellees made and continued to make misrepresentations about Appellee1 in this and in the Superior Court hearing—and the Appellant informed attorney Godwin of this a month ago.

13. It is clear they are intentionally delaying and prejudicial the Appellant to the rebuttal and to timely file the appeal brief—using more of Appellant's time for finishing the brief because of it, and not following the N.C. App. Rules of Procedures. They should be made to correct it and allow the Appellant at least 30 days for the brief for their correction to complete it and provide the Appellant with other appropriate relief this court provides as proper to allow the Appellant relief for attorney Godwin and Appellee3 for this substation or lack thereof including remanding this appeal to Superior Court to correct the

substitution there and to stay this appeal until it is corrected and the proper party substituted by Superior Court Rule 19 or N.C. App. R. 38.

14. If this Order were to go forth with no substitution how is the Appellant to rebuttal the primary party who was Appellee1. Does attorney Godwin and Appellee3 (Anthony Klish) propose this appeal for claims against Appellee1' would not at any time be determined—that is illogical—and R. 38 provides for substitution. The Appellant also included in the E-mails to attorney Godwin that he should do some 'due diligence' to this case, because Appellee1 was still a party (although he suggests having passed Appellee3 and the claims against him were not to be represented any longer), but he did nothing to do so and a necessary party is unrepresented (that is what he and Appellee3 were to correct).

Respectfully submitted this the 7th day of June, 2022.

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Appendix A-Exhibit 3-NCCOA-Appellant's Partial Opposition
to Appellees' Motion Extension Brief Due Date and Rule 38 - June 9, 2022

10th DISTRICT
NORTH CAROLINA APPELLATECOURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen
v.
Appellees Respondent 1:Propounder 1
Arthur L. Allen (Deceased)
Respondent 2: Propounder 2 [sic] Steve R. Allen
Respondent 3: Propounder 3 Anthony A. Klish
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) From: Wake County Case: #16-E-1390
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) (petition for administrator)), Petition
 #17SP000769 File No. From 06-E-
 1397 (this 'E' number was provided with
 Petition and might be incorrect)

APPELLANT'S RESPONSE AND PARTIAL OPPOSITION
TO APPELLEES MOTION TO EXTEND BRIEF FILED 06-07-2022

To the honorable court of appeals of North Carolina:

Why this Opposition

1. Appellant/Caveator2, Kathy R. Allen, hereby provides this response and partial opposition to appellees motion to extend brief filed 06-07-2022 is being filed to update the court on the inconsistencies in attorney Godwin's motion to extend. Although the Appellant is not opposed to 30 days for the due date for their extension to 08-01-2022 he has provided incorrect arguments or lack thereof in it.
2. Attorney Godwin also did not provide the Appellant the courtesy or request for the consent to the extension by N.C. App. Or do so later if he purports he did not have time to do so (which he did), but more than that he appears to be 'side-stepping' the Appellees and his responsibility to the appeal and trying to elude the true reason for the Appellant's 3rd extension granted 06-02-2022 was for her time to complete it and to the word count in it— see Appellant's 3rd Motion for Extension.

Appendix A-Exhibit 3-NCCOA-Appellant's Partial Opposition
to Appellees' Motion Extension Brief Due Date and Rule 38 - June 9, 2022

3. But more than that attorney Godwin (and his client Appellee3—who was the Wake Country Superior Court lawyer for Appellee1—the Appellant’s oldest brother who passed himself on a December 2020—is still the main party to the appeal and should be provided a N.C. App. R. 38 substitution for the appeal. Also their argument is incorrect that Appellee1’s own estate should be represented or that it should but just not as an Appellee or if so just not by these Appellees. That also is incorrect, and the short answer is that means Appellee1 goes ‘free and clear’ without being held accountable (in the superior court case filed long before he passed or for this appeal)—thus a necessary party remains unrepresented for the claims against Appellee, and that is attorney Godwin’s and Appellee3’s (the superior court lawyer) responsibility to provide the R. 38 or s Rule 19 should have been so in the November 16, 2022 hearing—that Appellee3 failed to do , but not for them to suggest it is the Appellant who should reservice Appellee1 in some manner or that they should not do the R. 38 now in the appeal. That also is question for discussion in the brief.
4. The Appellant thinks for that alone this court should *sua sponte* ‘stay’ this appeal and remand Judge Rozier’s the 11-18-2021 Order to have Appellee3 (the superior court lawyer) provide for this substitution or *sua sponte* this court provide an Order that attorney Godwin and Appellee3 provide it by N.C. pp. R. 38 within 14 days and stay the briefing schedule for briefs until it is filed—which the Appellant can then provide in the brief. See also Appellant’s 06-08-2022 response to attorney Godwin’s motion to withdraw as attorney for Appellee1, and *SMITH v. BRYANT* No. 685. 141 S.E.2d 303 (1965).. 264 N.C. 208 [and newer cases citing it] “...., the lawyer owes the duty to perfect his withdrawal in time to

**Appendix A-Exhibit 3-NCCOA-Appellant's Partial Opposition
to Appellees' Motion Extension Brief Due Date and Rule 38 - June 9, 2022**

prevent the necessity of a continuance of the case. "An attorney at law is a.... officer of the court with an obligation...[to the public]...his clients, for the office of attorney at law is indispensable to the administration of justice...."

Appellant's arguments, opposition and discrepancies to Attorney Godwin's 06-07-2020 Motion to Extension (MotExt) Brief to 08-01-2022

5. See Attorney Godwin's Motion to Extension:

6. p. 1 ¶¶ 1-4 Appellant is not rebutalling except that this included for May 17, 2022 and May 23, 2022 a motion for time to mediation and arbitration that requested the brief due date be extended to o/ September 1, 2022 to allow for this mediation/arbitration as it were as personal mediation or court-appointed mediation—one denied and the other as moot per that denial.

7. ¶¶5-6 Appellant is not rebutalling except that the brief filed 06-01-2022 before midnight was to be and was requested by the 3rd Motion to Extension that day if the 3rd Motion to extend were granted the Appellant would replace the brief by the new 07-01-2022 due date requested in the motion and to the word counts and so s to not have to delete important paragraphs in the brief in trying to meet the 06-01-2022 due date—the Order was granted the next day 06-02-2022, so the Appellant plans to and will replace the brief. But attorney Godwin suggests in his 06-07-2022 motion for Appellees' extension to file their brief by 08-01-2022 that the Appellant should not replace it, which is incorrect and being so plans to replace it as *supra*. That being so Appellees' brief would be due by o/a 08-01-2022 and is the proper due date anyway. If anything Appellees' motion to extend their brief should be to o/a 09-01-2022. In fact the Appellant also sent attorney Godwin at least two E-mail about the 06-02-2022 Order for the Appellant's and told the Appellant would replace her brief and do so by the due date 07-01-2022 and as of this filing plans to do so.

8. ¶¶ 7- 10 Appellant is not rebutalling except that as above any Appellee extension should be to o/a 09-01-2022 not o/ 08-01-2022 (their request was to 08-02-2022), and that attorney Godwin does not provide what the good cause is.

9. In conclusion attorney Godwin says ¶ 10 the extension will provide for justice but he does not say to for whom. It is clear he should be providing good cause to the appeal for the Appellant's several E-mails to him about Appellee1's substitution and that he should also be providing for good cause to 'Stay' the appeal until both he and Appellee3 correct their incorrect argument about Appellee1 to the N.C. App. 38 or by superior court Rule 19 for party substitution for this appeal.

Appendix A-Exhibit 3-NCCOA-Appellant's Partial Opposition
to Appellees' Motion Extension Brief Due Date and Rule 38 - June 9, 2022

10. That being so the Appellant does not oppose their 30 day extension but it should include Appellees providing this substitution by the appropriate statute and allowing the Appellant at least 14 days after that time to file her brief—that being so also requests this court Order this substitution be provided timely, so the appeal can continue with the necessary parties represented in the appeal and must be provided for in the appeal and its discussions as *supra*.

Respectfully submitted this the 9th day of June, 2022.

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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

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Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1:Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

MOTION TO STAY MANDATE

From: Wake County Case: #16-E-1390
IN THE MATTER OF THE ESTATE OF:
REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate)
(additional Wake County filings pending #18-CVS-013119,
special hearings and estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator)),
Petition #17SP000769 File No.
From 06-E-1397 (this 'E' number was provided
with Petition and might be incorrect)

APPELLANT'S MOTION TO STAY MANDATE

To The February 7, 2023 and February 23, 2023 Order (Indicating
No Opinion Was Filed for Appeal)

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IN SUMMARY THIS STAY OF THE MANDATE IS REQUESTED FOR THIS APPEAL	3

1. Appellant/Caveator2, Kathy R. Allen, who is having to proceed *pro se* is filing this as N.C. App. Rule 8 or more appropriate rule for motions to stay the mandate for this appeal until both the N.C. App. 31.1(d) February 23, 2023 '*Motion for En Banc Re-hearing*' (Doc. #39) and the '*Amended Motion for En Banc Re-hearing*' being filed February 27, 2023 (today) are ruled.

2. The February 7, 2023 (*Doc. #18*) and February 23, 2023 (*Doc. #39*) Orders by the NC-COA do not indicate who or if they were decided by the judge-panel of Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin are excessively contrary to the N.C. App. rules for opinions as published or unpublished.
3. This deviates from the standard for the appellate court rules for judge panel rulings and to opinions by N.C. App. R. 32 and is contrary to both rule precedence and substantial rights and due process by the 5th and 14th amendments and at least by N.C. App. R. 30(e)((4) for requesting an opinion.

DISCREPANCIES IN THE N.C. APP. RULES AND THE NC-COA ORDERS

4. This motion to stay the mandate is requested until these *en banc* R. 31.1(d) re-hearing motions are ruled and after that until any subsequent N.C.G.S. 7A-27– N.C.G.S. 30- 32, writ of certiorari or similar motions and notice s of appeal of the NC-COA for this appeal are determined to be filed or by the appropriate N.C. App. R. 14-16 (N.C.G.S. 7A-30 to N.C.G.S. 32) after the February 23, 2023 (*Doc. #40*) and this February 27, 2023 motions is ruled or denied as the final *en banc* motion.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

5. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration. Appellees had several opportunities to correct their wrong but continued their misrepresentations. Appellees also 'without a word' to correct the deficiency of the requirement for opinions they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal view for its merits and be denied any costs for this appeal, because it is their conduct not the Appellant's that cause the filing of the case in Wake County Superior Court and this appeal.

IN SUMMARY THIS STAY OF THE MANDATE IS REQUESTED FOR THIS APPEAL

6. The Appellant files this motion to stay until the motions as *supra* are ruled by the judge-panel of Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin.

7. It does not prejudice any of the parties except the Appellant who should maintain the timeline for the appeal and of it to the N.C. Supreme Court for review by the appropriate statute upon a ruling of the filed '*En banc rehearing*' and '*Amended En banc Re-hearing*' motions so as to properly argue the dismissal by the proper N.C. Supreme Court or similar (e.g.) U.S.D.C. in the Court of Appeals statute.

Respectfully submitted this the 27th day of February, 2023.

s/ Kathy R. Allen (*Pro Se*)

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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1: Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

AMENDED MOTION FOR *EN BANC* REHEARING

From: Wake County Case: #16-E-1390
IN THE MATTER OF THE ESTATE OF:
REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate)
(additional Wake County filings pending #18-CVS-013119,
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APPELLANT'S AMENDED MOTION FOR *EN BANC* REHEARING

To The February 23, 2023 Order Indicating
No Opinion Was Filed for Appeal

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IN SUMMARY THIS AS AN AMENDED NC-COA EN BANC RE-HEARING MOTION REQUIRES THE NC-COA'S OPINION	8

1. Appellant/Caveator2, Kathy R. Allen, who is having to proceed pro se is filing this as an amended N.C.G.S. 31.1(d) *en banc* motion for rehearing . On February 23, 2023 the Appellant filed a motion *Doc.#39* to maintain the 15 days to filing it. After viewing the N.C. App. rules for it the more appropriate filing would be to file the motion as 'an as complete' as possible and motion later to amend this *en banc* hearing motion by the appropriate N.C. App. R. 14-16 (N.C.G.S. 7A-30 to N.C.G.S. 32) after the February 23, 2023 motion is ruled or denied as the final *en banc* motion.

2. The Appellant is also in a 'time-crunch' for her own personal schedule to properly cite cases for this 'amended *en-banc re-hearing*' motion and does not waiver to a 2nd amendment of it to the timeline for ruling on it. But it provides for the questions for an opinion not filed with the dismissal and the Orders Doc. #40 for it, and should be rescinded on that alone to the dismissal to provide an opinion to allow the Appellate to properly provide a response to the dismissal as a N.C.G.S. 7A-27 to N.C.G.S. 30-32 response—not providing the opinion or not doing so by this motion disadvantages the Appellant for her relief and post-appeal.

INTRODUCTION NC-COA APPEAL RULING DISADVANTAGES THE APPELLANT TO N.C. SUPREME COURT REVIEW OF THE NC-COA RULING

3. Appeals are difficult enough without complicating them with a court's non-adherence to the procedural for its ruling. That being so it is clear the NC-COA Orders filed February 7, 2023 (*Doc.#18*) and February 23, 2023 (*Doc #39*) violated the Appellant's substantial rights and due process to the appeal case for a review of the appeal by the N.C. Supreme Court rules. This appeal was filed April 1, 2022 and progressed with filings and to the Order (February 7, 2023 *Doc.#18*) granting the Appellees *Doc.#18* motion to dismiss (MTD). But it is clear that Order disadvantages the Appellant and has been so throughout the filings for the appeal.

THE DISPOSITION OF THE APPELLANT'S R. 33 AND R. 38 MOTIONS FILED IN NC-COA
FOR THE APPEAL ARE QUESTIONABLE

4. There were approx.. 49 documents filed in this appeal including the notice of appeal and Appellant's notice of representation. Of those 33 were the Appellant's. Of the Appellant's all except motions for extensions were 'denied' by the NC-COA (being signed as 'Eugene Soares—Clerk of the court' instead of with the judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin signatures of sort by them or a judge's signature indicating it had been viewed properly (which clearly they did not cite anything to the Appellant's December 9, 2022 brief or November 23, 2022 Doc, #33 reply to the Appellees' (MTD) Doc.#18 or the Appellees' brief Doc.#19—which has no Order of its own.

5. Those supplement and other non-extension motions were filed to notify the NC-COA of and to supplement the record that the N.C. App. R. 33 notice of representation was required for Defendant1 (the Appellant's oldest brother who the Appellant was told passed in late 2020) –and no notice of representation had not been filed by his own estate, his tribunal court attorney (Appellee3) or any such estate for Appellee1. As the record of appeal filings indicate 'each was denied'. Indeed a 'necessary party' should be represented and without doing so Defendant should rightfully 'lose by default' with judgment for the Appellant. So are the other motions filed requesting the N.C. App. R. 38 for the same Appellant1 and for a substitution for him--but all of those were denied—seemingly just robo-signing of the Orders denying the motion with no analysis, Federal Civil Rules of Procedures (FCRP) Rule 52 findings of fact or similar included—Rightfully the MTD should entertain this and award the Appellant not just ignore as it does Appellee1 was unrepresented.

THE NC-COA ORDERS FOR DISPOSITION OF THIS APPEAL ARE QUESTIONABLE BY
N.C. APP. 32 AND OTHER PERTINENT N.C. APP. RULES FOR ORDERS, MANDATES
AN OPINIONS

6. As *supra* the February 7, 2023 Order (*Doc. #18*) also did not include any analysis just indicating the Appellees' motion to dismiss was granted. This prompted the Appellant to file the motion for an extension (*Doc. #39*) to file the Rule 31.1(d) *en banc* rehearing motion to request of when an opinion (published or unpublished) it would be filed and would then file the R. 31.1(d) motion. NC-COA then sent the February 23, 2023 (*Doc. #39*) Order that no opinion would be filed—thus to toll the *en banc* hearing' due date. But this complicates bot procedurally (if it is correct) and whether to file this motion as an '*amended en banc rehearing*' motion of the February 23, 2023 motion or allow NC-COA to rule on it and reserve to amend it as a violation of the rules for N.C. App. R. 32 or similar opinions and mandates. After a notice of appeal of NC-COA's February 23,2023 Order is on review in the N.C. Supreme Court and by that allowed due date.

7. That being so this '*amended en banc rehearing*' is being filed.

WHY THE NC-COA SHOULD ALLOW EN BANC RE-HEARING

8. The NC-COA should allow an *en banc rehearing* because it is clear:

- (1) NC-COA has not provided the proper attention to the appeal requirements for necessary parties to be represented,
- (2) The NC-COA did not provide an opinion for their February 7, 2023 and February 21, 2023 Orders ruling,
- (3) The Appellees did not provide a sufficient MTD to dismiss the appeal, and
- (4) The case is for an estate matter for a Caveat filed for the Appellant's mother's estate and on appeal because the Wake Superior County Court ruling for it did not provide the proper ruling for N.C.G.S. 31-37 et. seq., the proper proceedings for estate and 'Will' administration and violated at least N.C.G.S. 28A for both an in doing so caused the Appellant between \$15m000 to a foreclosure on the homestead property, and
- (5)The rulings in both courts have denied to the Appellant's rights as an 'heir' to her mother's estate to be determined

JUDGE PANELS' NON-OPININON AND NON-ANAUYLSIS PROCEDURALLY FAILS

9. Court mandates with opinions by N.C. App. Rule 32 are required to be sent to the

tribunal court within 20 days of the order. By that alone the MTD Orders fails and should be rescinded to provide it. By that same rule opinions are due.

BACKGROUND/HISTORY ON THE WAKE COUNTY SUPERIOR COURT AND NC-COA
CASE

10. Appellant file the Caveat2 in Wake County Superior Court February 13, 2020. After Coronavirus delays and align the parties motion was filed and calendared for November 16, 2021. Judge Rozier dismissed the Caveat2 on Order November 18, 2021 (R. p. xxx) on the Defendants' MTD (at hearing) suggesting the statute of limitations (SOL) was up when the Appellant file the N.C.G.S. 31-37 Caveat. But a thorough review of the filings and court record will indicate that is not correct—and if it were there are questionable compliance with the N.C.G.S. 28A and 29 for estates and 'Will's—thus violating the Appellant's relief by it and by N.C.G.S. §1-52 and § 1-15 for statute of limitations (R. xxx) .

11. At the same time it is the Appellees including Appellee3 (Appellant's brother's attorney) whom the Appellant sued in 2018 for his conduct or lack thereof for the estate matters—and his failures to admit his wrong—thus he continued into this appeal without a word or effort to correct it or his own conduct)—and a ruling on the merits was and has been denied in this Caveat2 and denies the Appellant a substantial right and due process to have the estate matter an 'Will' determined and provided to the Appellant as an heir to and of her mother's estate.

12. The Appellant filed her R. pp.1-176) on July 25, 2022) and the successive filings followed in the NC-COA—thus we know the Wake County Superior Court Orders fail to both declaratory, equitable or N.C.G.S. 28A/29 relief to have granted the Appellees' MTD without a Rule 52 findings of fact for it. This *en banc rehearing* motion followed and was filed February 23, 2023 and 'amended' by this motion on February 27, 2023 (see NC-COA docket sheet for all the filings) <https://appellate.nccourts.org/dockets.php?court=2&docket=2-2022-0276-001&pdf=1&a=0&dev=1>".

13. Indeed how can any ruling be a matter of success on their merits or by Rule 12(b)(6) dismissal when the evidence is not heard. (R. pp.)

STATEMENT OF THE FACTS

14. The NC-COA and these Orders have turned the appeal from the Defendants' conduct into a question of their conduct. Being so those facts are to non-compliance with N.C. App. R. 32 for opinions and analyses for appeal dismissals. It also is conduct for see U.S. Code 1983 violations, which the Appellant does not waive by this filing for relief.

NC-COA AND OPINIONS AND MANDATES ARE REQUIRED BY N.C. APP. R. 32

15. Absent the NC-COA's opinion or analysis the Appellant is denied relief to provide a proper *en banc rehearing* motion—and forced to discuss the NC-COA's judge-panel's conduct instead of the Defendants whose conduct require the filing of the Caveat in the tribunal court—that alone requires rescinding the Order. But more than that if the NC-COA is suggesting the MTD (*Doc#14*) does not require an opinion because it is not a dismissal using the Appellees' brief (*Doc. #15*)—that also fails, because that corrective action would be to rule on the Appellees' brief—then file the judge-panel's opinion—but dismissal by N.C. App. R. 32 the MTD with no opinion still fails and so does doing for by the brief, e.g. if the Appellees had not also filed a brief—and is now the NC-COA's procedural by N.C. App. R. 32 violations.

16. It is clear by the February 7, 2023 and February 23, 2023 Orders ignored the Appellant's brief (*Doc#14*) and replies (*Doc.#33*) to the Appellees' MTD and brief (*Doc.#28*)

ARGUMENTS TO THE NC-COA'S CONDUCT FOR THESE ORDERS

17. Judges and this judge panel should follow the N.C. App. Rules and failed to do so.

JUDGE PANEL DID NOT PROVIDE THE PROPER RULING OR PROCEDURALLY TO
FILE AN OPINION

18. When considering the MTD the judge panel and judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin should have included an analysis that included the Appellant's

brief and rely in an analysis-format and discussion to the Order and in it why the February 7, 2023 Order imposed costs and how these were determined—and should be provided.

JUDGE PANEL IS PREJUDICIAL TO THE APPELLANT AND TO PRO SE APPELLANTS

19. Whether the Appellant is *pro se* are not should not have affected the judge panel to not file an opinion (published or unpublished)—thus ignoring a substantial right and due process for appeals by among other N.C. App. Rules to U.S. Code 1983.

NC-COA JUDGE PANEL AND WAKE COUNTY SUPERIOR COURT BOTH ERRORED AND IS A PUBLIC CONFLICT AND OF CONCERN FOR ESTATE ADMINISTRATION

20. Considering the appeal was for a state an heir matter contesting a 'Will' is ultimately a concern for the public and as denying proper estate administration and erred to have done or allowed any of the above in ¶¶18-20. If there is a dismissal should ensure both declaratory and/or injunctive relief for the Appellant as an heir of the estate matter.—but did not. Being so it is an abuse of power and an abuse of discretion for the NC-COA judge-panel Judges Chris Dillon, Tobias Hampson, and Jefferson Griffin to not provide opportunity for requesting and providing at least a N.C. App. Rule 30(e)4 opinion.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

21. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration. Appellees had several opportunities to correct their wrong but continued their misrepresentations. Appellees also 'without a word' to correct the deficiency of the requirement for opinions they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal view for its merits and be denied any costs for this appeal, because it is their conduct not the Appellant's that cause the filing of the case in Wake County Superior Court and this appeal.

Appendix A-NCCOA-Exhibit 5 Amended Appellant's
Motion En Banc Rehearing - February 27, 2023

IN SUMMARY THIS AS AN AMENDED NC-COA *EN BANC* RE-HEARING MOTION
REQUIRES THE NC-COA'S OPINION

22. The Appellant files this as an amended *en banc* rehearing motion requesting the analysis and opinion so the *en banc* rehearing motion can be properly argued and reserves to amend it when it is received by App. R. 32. That being so without an opinion how is the Appellant to provide the *en banc* rehearing arguments to discuss it until it is filed—and this *en banc rehearing* motion would be timely by it.

Respectfully submitted this the 27th day of February, 2023.

s/ Kathy R. Allen (*Pro Se*)
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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Appellees Respondent 1:Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

From: Wake County Case: #16-E-1390

IN THE MATTER OF THE ESTATE OF:
REBECCA BOWDEN ALLEN JOHNSON

Deceased Case #16-E-001390 (caveat for estate)

(additional Wake County filings pending #18-CVS-013119,
special hearings and estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator)),

Petition #17SP000769 File No.

From 06-E-1397 (this 'E' number was provided
with Petition and might be incorrect')

APPELLANT'S MOTION TO REQUEST NC-COA TRANSMIT THE RECORD FOR
CASE #22-276 TO THE NC-SUPREME COURT (NCSC) FOR CASE #84P23

WHY THIS MOTION

1. Appellant/Caveator2, Kathy R. Allen, who is having to proceed *pro se* is filing this as N.C. App. Rule 37 motion or a more pertinent rule to request that the NC-COA transfer the record for case #22-276 to the NC-Supreme Court for case #84P23. On March 17, 2023 the Appellant filed the notice of appeal for NCSC case #84P23 and also a petition for discretionary review by N.C.G.S. § 7A-30 and § 7A-31 by N.C. App. 14 (b)(2), and R. 15(b), respectively or as a more appropriate statute for the NC-COA Orders filed February 7, 2023 (*Doc.#18*) and February 23, 2023 that granted the Appellees *Doc.#18* motion to dismiss (MTD) and NC-COA's successive March 3, 2023 Orders.

2. See *N.C. App. Rule 14 (2)* "...Transmission; Docketing; Copies. Upon the filing of a notice of appeal, the clerk of the Court of Appeals will forthwith transmit the original record on appeal to the clerk of the Supreme Court, who shall thereupon file the record and docket the appeal...."

3. The NC-COA was to transfer the record to NC-SC within 20 days of the NCSC notice of appeal and o o/a April 5, 2023. As of this filing it has not been transmitted. The rules do not indicate that the Appellant should file it, but should be NC-COA who does. So the Appellant is being proactive by this motion and requests NC-COA to do so.

**DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS
FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL**

4. It is clear Appellees misrepresented the status of this case to the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration. Appellees had several opportunities to correct their wrong but continued their misrepresentations. Appellees also 'without a word' to correct the deficiency of the requirement for the record they continued their wonton conduct to not allow due process for this appeal. Appellees must be held accountable, and this case and appeal view for its merits and be denied any costs for this motion or appeal, because it is their conduct not the Appellant's that cause the filing of the case in Wake County Superior Court and the #22-276 appeal.

CONSENT FOR THIS MOTION

5. Usually parties are required to request consent for motions filed. Being that this is a record the NC-COA (not the Appellant) should provide the Appellant did not request it as a necessary consent of the other parties to file this motion. That being so the Appellant asks that this court immediately transmit the case #22-276 record to the NCSC as *supra* or indicate when it will be transmitted so among other things N.C. App. Rule 28 brief and extensions for them or the Appellant's other timelines can be timely in use and citation of the record.

Appendix A-Exhibit 5A-Appellant's
Motion to Transfer NCCOA Record to NCSC - May 9, 2023

Respectfully submitted this the 9th day of May, 2023.

s/ Kathy R. Allen (*Pro Se*)
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10th DISTRICT
NORTH CAROLINA APPELLATECOURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen
v.
Appellees Respondent 1:Propounder 1
Arthur L. Allen (Deceased)
Respondent 2: Propounder 2 [sic] Steve R. Allen
Respondent 3: Propounder 3 Anthony A. Klish
Arthur L. Allen et. al.[sic]

) From: Wake County Case: #16-E-1390
) IN THE MATTER OF THE ESTATE OF:
) REBECCA BOWDEN ALLEN
) JOHNSON Deceased Case #16-E-001390
) (caveat for estate) (additional Wake
) County filings pending #18-CVS-013119,
) special hearings and estate filings #18
) SP1746 (foreclosure), #17-SP-1397
) (petition for administrator)), Petition
 #17SP000769 File No. From 06-E-
 1397 (this 'E' number was provided with
 Petition and might be incorrect)

APPELLANT'S [UNCONSENTED] MOTION FOR A RULE 38 SUBSTITUTION - A
NECESSARY PARTY

Why this motion for a necessary R. 38 party substitution

1. Appellant/Caveator2, Kathy R. Allen, who continues to be *pro se* provides this separate motion for a R. 38 substitution in response to the 08-19-2022, 2022 Order Doc. #17 denying her opposition to C. Godwin (Appellees' attorney) withdrawal as attorney for Appellee1 (Arthur L. Allen). That opposition was in the motions filed between 06-07-2022 to 06-09-2022 Doc. #11 and Doc. #16 and in Doc. #17 her response opposition to the attorney withdrawal by Order Doc. #16 on 06-05-2022. This motion is not duplicative of any of those or of other motions discussing the 06-06-2022 attorney withdrawal or the Order 08-19-2022 Doc. #21 for it or in the discussions on the R. 38 and Rule 19 substitution for a necessary party (and an attorney) as such this is a separate motion for it. Seemingly the Order is signed by the clerk of the court (Ed Soares) not a judge and denying a substantial right by not providing a R. 38 or R. 19 substitution is a function of a judge, so maybe the clerk (Soares) is just denying the motion to the title of it instead it is prejudicial to the

Appellant to not have the proper party represented—thus this motion is required for the separate request for it.

2. On 08-17-2022 because the Appellees had not filed their 07-18-2022 response to the opposition for attorney withdrawal and there were due dates for other filings for the case the Appellant filed the 08-17-2022 motion for this court to view that motion and was ‘Motion for an Order - 2nd Motion to Supplement the Record Doc. #17 and so this court would rule in time for the due dates for the other filings for this case.

Appellees then filed a motion to dismiss on 08-15-2022

3. Appellees when they received that motion on 08-17-2022 (immediately filed additional responses Doc. #18, 19, 20 —now that was also their having missed their 07-18-2022 due date for a response to the Appellants Doc. #11 and Docs. #16, 17 oppositions for the attorney (C. Jordan Godwin) withdrawal and the 06-05-2022 Order for it. Being so the Appellees filed those and as a response to her 2nd Motion to supplement the record thus this allowed the Appellees opportunity to respond twice), because they should have provided a response to Doc. #16 by 07-18-2022 or filed themselves an extension to file it late and being so their late response should be denied not have it intermingled with the Appellant’s #Doc.16 and her Doc. #17 filed on 08-17-2022 motion—which was just to be a reminder to the court the motion was pending to maintain due dates for the Appellant’s responses to other filings.

4. If the court is allowing the Appellees’ this 07-28-2022 late and as a response to that the Appellant’s 08-17-2022 motion Doc. #21 Appellees should motion to extend the time for it as *supra* and if R. 37 does not allow the Appellant a 10-day response to their Doc. #20 filed 08-15-2022 Appellant requires an extension as *infra* to reply to their MTD (which is being also motioned separately today—but again a MTD is premature not allowed by the

Appendix A-NCCOA-Exhibit 6-Appellant's Motion
Rule 38 Substitution - August 22, 2022

rules or to N.C. App. R. 25, and its rebuttal should be by allowing the Appellant's response due o/a 08-25-2022 to the MTD. That being so the Appellant R. 37 responses for Doc. #11, #16, 17 (for that Order), and #18 (MTD) are allowed within 10 days.

5. As above the most recent and pending Appellant response would be to the Appellees 08-15-2022 Doc. #20 response (which its argument is clearly illogical) and the Appellant should be by R. 37 allowed and plans to file within 10 days the response and as such their argument should be denied). But being so as *supra* on 08-15-2022 the Appellees also filed Doc. #19 motion to dismissal appeal (MTD)—requiring the extension to reply—thus their brief also has a du date of not until 09-28-2022—which would also allow the Appellant time to respond to the MTD—or this court should deny their MTD as moot by the briefing schedule.

6. If the Appellant's response to their Doc. #20 is not allowed by the R. 37 or a more pertinent rule for responses their MTD still requires the Appellant to file at least a 30-day extension to allow time to respond as *sura* to be filed separately for that extension.

7. This motion instead of the opposition to the withdrawal as *supra* specifically requests the Appellees provide the R. 38 substitution and an attorney for Appellee1 as *supra*—who seemingly would be Appellee1's estate and/or Appellee3 (the attorney in the Superior Court case) to correct this by R. 38 or R. 19 and to do so within 14 to 30 days.

8. On 08-22-2022 approx. 1:30pm EST the Appellant sent the Appellees an E-mail requesting consent and their reply for this motion by 4:00pm EST, indicating if they did not receive the E-mail or reply in time it would be filed 'Unconsented'. With or without their consent the Appellant thinks this motion should be granted to provide the required R. 38 and R. 19 substitution properly—without doing so affect a substantial right and is prejudicial to

Appendix A-NCCOA-Exhibit 6-Appellant's Motion
Rule 38 Substitution - August 22, 2022

the case and appropriate remedy, which is Fed. R. 59 and/or R. 60 for such denial—but the Appellant believes providing the R. 38 substitution will correct the record (both for the Wake Superior Court case and the appeal) and save everyone time.

Respectfully submitted this the 22nd day of August, 2022.

s/ Kathy R. Allen (*Pro Se*)
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Alternate Certificate of service address:
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10th DISTRICT
NORTH CAROLINA APPELLATE COURT

No. COA22-276

Appellant/Caveator2 Kathy R. Allen

v.

Respondent 1:Propounder 1

Appellees Respondent 1:Propounder 1

Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen

Respondent 3: Propounder 3 Anthony A. Klish

Arthur L. Allen et. al.[sic]

) From: Wake County Case: #16-E-1390
) IN THE MATTER OF THE ESTATE
) OF: REBECCA BOWDEN ALLEN
) JOHNSON Deceased Case #16-E-
) 001390 (caveat for estate) (additional
) Wake County filings pending #18-CVS-
) 013119, special hearings and estate
) filings #18 SP1746 (foreclosure), #17-
) SP-1397 (petition for administrator),
) Petition #17SP000769 File No. From 06-
) E-1397 (this 'E' number was provided
) with Petition and might be incorrect)

Certificate Of Service

I hereby certify that on 08-22-2022 a copy of this APPELLANT'S [UNCONSENTED] MOTION FOR A RULE 38 SUBSTITUTION - A NECESSARY PARTY to the N.C. App. Ct. for Superior Ct Estates Division Case #16-E-001390 (caveat for estate) (additional filing pending #18-CVS-013119, special hearings and estate filings #18 SP1746 (foreclosure), #17-SP-1397 (petition for administrator)) to: '**PETITION CAVEAT IN THE MATTER OF THE ESTATE OF: REBECCA BOWDEN ALLEN JOHNSON Deceased for Petition #17SP000769 File No. From 06-E-1397** (this 'E' number was provided with Petition and might be incorrect)' was sent to Propounders/Appellees and/or their attorney in the following manner.

Appendix A-NCCOA-Exhibit 6-Appellant's Motion
Rule 38 Substitution - August 22, 2022

By regular mail, eFiling and/or E-mail a copy to:

Respondent 1/2/Propounder 1/2 and Propounder/Respondent3:

Propounder 1/Propounder 2

Arthur L. Allen (deceased)/ Steve R. Allen Deliver to attorney: Anthony A. Klish Anthony A. Klish 7706 Six Forks Road Suite 101 Raleigh. NC 27615 Office: (919) 526-0450/Fax (919) 992-8763 Anthony@maginnishoward.com

Propounder 2: Steve R. Allen 778 Duffield Drive NW Atlanta, GA 30318

Propounder 3: Anthony A. Klish 7706 Six Forks Road Suite 101 Raleigh. NC 27615

Caveator 1: Jay K. Allen: 2526 Poole Road Raleigh, NC 27610-2820

Caveator 2: Kathy R. Allen: 26 55th Street NE, Washington, DC 20019-6760

Appellees and Appellees' Attorney

Arthur L. Allen (deceased)/ Steve R. Allen Deliver to attorney, Anthony A. Klish Anthony A. Klish for Anthony A. Klish 7706 Six Forks Road Suite 101 Raleigh. NC 27615 Office: (919) 526-0450/Fax 919) 992-8763 Anthony@maginnishoward.com
Collectively "Respondents/Appellees"

C. Jordan Godwin

N.C. State Bar.: 56316

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Counsel for Appellees Steve R. Allen & Anthony Klish [sic Arthur L. Allen]

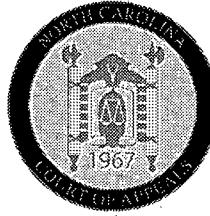
Date: 08-22-2022

Respectfully submitted,
s/ Kathy R. Allen (*Pro Se*)

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North Carolina Court of Appeals

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From Wake
(16E1390)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Appendix A-NCCOA-Exhibit 6A - Order Denied Appellant's Opposition and
No. 22-276 Supplement Record to Attorney Withdrawal and Rule 38 - July 5, 2022

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

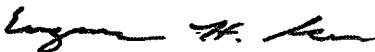
ORDER

The following order was entered:

The motion filed in this cause on the 1st of July 2022 and designated 'Appellant's Motion to supplement Record on C. Jordan Godwin Withdrawal as Attorney for Attorney for Arthur L. Allen (Appellee1) and Require the N.C. APP. R. 38 Substitution' is decided as follows: The attached supplement shall be considered with Appellant's 7 June 2022 motion designated "Appellant's Opposition to Appellees' Attorney Godwin 06-03-2022 to Withdraw as Attorney for Aurther L. Allen (Appellee1)", which this Court originally entered as a response. Appellees' response(s) to Appellant's 7 June 2022 motion, if any, shall be filed on or before 18 July 2022.

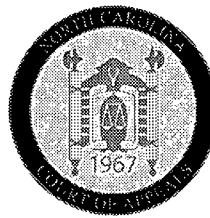
By order of the Court this the 5th of July 2022.

WITNESS my hand and official seal this the 5th day of July 2022.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
Ms. Kathy Allen, For Allen, Kathy
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R.
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Wake
(16E1390)

Appendix A-NCCOA-Exhibit 6B - Order
No. 22-276
Denied Appellant's Rule 38 - August 19, 2022

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

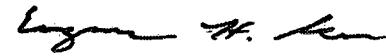
ORDER

The following order was entered:

The motion filed in this cause on the 17th of August 2022 and designated 'Appellant's Second Motion to Supplement the Record and for an Order for Motions Filed Between 6-7-2022 to 6-9-2022 and for R.38 Substitution' is denied.

By order of the Court this the 19th of August 2022.

WITNESS my hand and official seal this the 19th day of August 2022.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R.
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

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From Wake
(16E1390)

Appendix A-NCCOA-Exhibit 6C - Order Granting
Appellees' MTD Doc. #18 - February 7, 2023

No. 22-276

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

ORDER

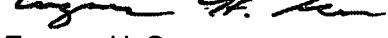
The following order was entered:

The motion filed in this cause on the 15th of August 2022 and designated 'Motion to Dismiss Appeal' is allowed. Appeal dismissed. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Kathy Allen, do pay the costs of the appeal in this Court incurred, to wit, the sum of Eighty Seven Dollars and 75/100 (\$87.75), and execution issue therefor.

By order of the Court this the 7th of February 2023.

WITNESS my hand and official seal this the 7th day of February 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Wake
(16E1390)

Appendix A-NCCOA-Exhibit 6D - Order Denying Appellant's
No. 22-276 En Banc Motion for Extension Doc. #39 - February 23, 2023

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

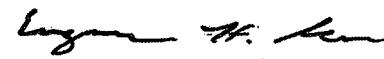
ORDER

The following order was entered:

The motion filed in this cause on the 21st of February 2023 and designated 'Appellant's Motion to Extension to File En Banc Rehearing Motion to the February 7, 2023 Order Granting Defendant-Appellees' August 15, 2022 Motion to Dismiss (MTD)' is denied. This Court dismissed the appeal by order entered 7 February 2023. As a result of this dismissal, no opinion will be filed.

By order of the Court this the 23rd of February 2023.

WITNESS my hand and official seal this the 23rd day of February 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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Raleigh, NC 27601

(919) 831-3600

From Wake
(16E1390)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Appendix A-NCCOA-Exhibit 6E - Order Denying

No. 22-276 Appellant's En Banc Rehearing Motion Doc. #40 - March 3, 2023

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

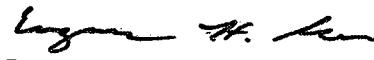
ORDER

The following order was entered:

The motion filed in this cause on 23 February 2023 and designated "Motion for En Banc Rehearing" is dismissed.

By order of the Court this the 3rd of March 2023.

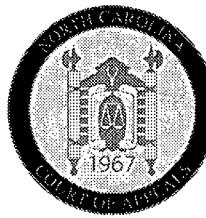
WITNESS my hand and official seal this the 3rd day of March 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Wake
(16E1390)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Appendix A-NCCOA-Exhibit 6F - Order Denying
No. 22-276 Appellant's Amended En Banc Rehearing Motion Doc. #41 - March 3, 2023

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

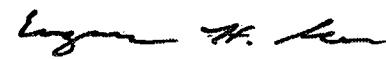
ORDER

The following order was entered:

The motion filed in this cause on the 27th of February 2023 and designated 'Amended Motion for En Banc Rehearing' is dismissed.

By order of the Court this the 3rd of March 2023.

WITNESS my hand and official seal this the 3rd day of March 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Fax: (919) 831-3615
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Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601

(919) 831-3600

From Wake
(16E1390)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Appendix A-NCCOA-Exhibit 6G - Order Denying
No. 22-276 Appellant's Motion to Stay Mandate Doc. #42 - March 3, 2023

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

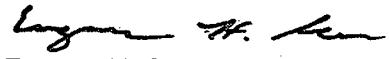
ORDER

The following order was entered:

The motion filed in this cause on the 27th of February 2023 and designated 'Motion to Stay Mandate' is dismissed.

By order of the Court this the 3rd of March 2023.

WITNESS my hand and official seal this the 3rd day of March 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
Hon. Frank Blair Williams, Clerk of Superior Court

APPENDIX B - Decisions of the State Trial Court

APPENDIX B

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Appendix B-Exhibit 4 - Appellant's E-mail to TCA Requesting Rule 52 and Rule59 – November 30, 2021 (other E-mails upto December 22, 2021 to the TCA requesting the Rule 52 are in the NCCO-R but to save space are not included in Appendix B)	115
Appendix B-Exhibit 4A - Appellant's E-mail1 to TCA Requesting Rule 52 and Rule59 - December 14, 2021 (other E-mails upto December 22, 2021 to the TCA requesting the Rule 52 are in the NCCO-R but to save space are not included in Appendix B)	119

Appendix B -Exhibit 1 - Order - WCSC Judge Rozier's
November 18, 2021 Denying Appellant's Caveat2

NORTH CAROLINA

WAKE COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

16-E-1390

2021 NOV 18 PM 2:10

KATHY ALLEN,

WAKE CO., C.S.C.

Caveator,

BY _____

ORDER

v.

ARTHUR ALLEN, et al.,

Propounders.

THIS MATTER came on to be heard and was heard before the undersigned Superior Court judge presiding on November 16, 2021 at a Session of Superior Court for Wake County held virtually upon the Caveator's Motion to Align Caveat Parties and Motion to Continue and the Propounder's Motions to Dismiss pursuant to N.C.G.S. 1A-1, Rules 12(b)(4), (6), and (7). Appearing via Webex were Caveator Kathy Allen and Attorney Anthony Klish for Propounders.

The Court having considered the arguments of both parties, having reviewed the pleadings and filings of record, having reviewed the submissions, and having reviewed the prior orders of The Honorable Mary Ann Tally and The Honorable G. Bryan Collins filed related to the parties, finds that the motion to dismiss should be allowed.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. Caveator's motion to continue is denied.
2. Propounder's motion to dismiss is allowed.
3. This Action is hereby dismissed with prejudice.

This the 18th day of November, 2021.


The Honorable Winston Rozier, Jr.
Superior Court Judge Presiding

Appendix B -Exhibit 1 - Order - WCSC Judge Rozier
November 18, 2021 Denying Caveat2

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document (order denying Caveator's motion to continue and granting propounder's motion to dismiss) was served on the persons indicated below by email, and or postage prepaid, addressed as follows:

Kathy R. Allen
26 55th St
Washington, DC 20019
and
2526 Poole Rd
Raleigh, NC 27610
Caveator

Jay Allen
2526 Poole Rd
Raleigh, NC 27610
Propounder

Anthony A. Klish
anthony@magnishoward.com
Attorney for Defendant L. Allen Allen

This the _____ day of November, 2021.



Shanda R. Smallwood
Judicial Assistant – 10th Judicial District
Shanda.R.Smallwood@nccourts.org

STATE OF NORTH CAROLINA
WAKE COUNTY

JAY K. ALLEN,

Petitioner,

vs.

ARTHUR L. ALLEN,
Respondent.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 16-E-1390

) ORDER GRANTING RESPONDENT
) ARTHUR L. ALLEN's
) MOTION TO DISMISS

This case was heard by the Honorable Superior Court Judge Tally presiding during the January 06, 2020 Civil Session of Wake County Superior Court on Respondent Arthur Allen's motion, pursuant to G.S. 1A-1, Rules 12(b)(6), 12(b)(7), and 41(b) to dismiss the case against Petitioner/Caveator on the grounds of failure to assert a claim upon which relief can be granted, failure to join a necessary party, and for failure to prosecute.

After reviewing the pleadings, and after hearing arguments, the Court is of the opinion that Respondent's Arthur L. Allen's motion to dismiss should be allowed due to Petitioner's/Caveator's failure to assert a claim upon which relief can be granted and for Petitioner's/Caveator's failure to prosecute the case.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. Respondent's Arthur L. Allen's motion to dismiss is allowed;
2. Respondent's Arthur L. Allen be dismissed as a party to this action;
3. That this Action is hereby dismissed with prejudice; and
4. That the costs of this action be taxed against Petitioner/Caveator.

This the 7th day of January, 2020.


The Honorable Superior Court Judge Presiding

STATE OF NORTH CAROLINA
COUNTY OF WAKE

THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 E 1390

JAY K. ALLEN,
Petitioner,
vs.
ARTHUR ALLEN,
Respondent

**CERTIFICATE OF SERVICE OF
ORDER GRANTING RESPOND
ARTHUR L. ALLEN'S MOTION TO
DISMISS**

The undersigned, as counsel for Respondent Arthur Allen, certifies that on this day the "Order Granding Respondent Arthur L. Allen's Motion to Dismiss" was served upon the following parties by depositing a copy thereof in the United States mail, postage prepaid, and addressed as follows:

Kathy R. Allen
2526 Poole Road
Raleigh, NC 27610

Kathy R. Allen
26 55th Street NE
Washington, DC 20019

Jay Allen
2526 Poole Road
Raleigh, NC 27610

Steve R. Allen
778 Duffield Drive NW
Atlanta, GA 30318

This the 28th day of January, 2020.

MAGINNIS LAW, PLLC

Anthony A. Klish
Attorney for Arthur Allen
Office: (919) 424-4951
Facsimile: (919) 882-8763
Email: Anthony@MaginnisLaw.com

03:31:27 1 of the will caveat. And even if it didn't have a statute of
03:31:30 2 limitations issue, it's already been decided pursuant to
03:31:34 3 collateral estoppel and res judicata.

03:31:39 4 THE COURT: All right. Let me just go back
03:31:40 5 through a few things. You mentioned 12(b)(4) summons.
03:31:50 6 Everyone is here. I'm not saying whether or not it's an
03:31:56 7 inappropriate motion, but everyone who was included is here
03:32:03 8 and present today, correct?

03:32:06 9 MR. KLISH: Arthur Allen is deceased, so he can't
03:32:08 10 be present, right. And then Steve Allen isn't present. He
03:32:12 11 is my client. So I am effectively here on his behalf, yes,
03:32:15 12 Your Honor.

03:32:16 13 THE COURT: And then on the failure to join, I
03:32:18 14 know you mentioned Arthur Allen. I don't -- When was it
03:32:24 15 that he passed? Was it following this filing?

03:32:32 16 MR. KLISH: I believe so, yes, Your Honor. It
03:32:33 17 would have been -- I don't know off the top of my head, but
03:32:39 18 it would have been the end of 2020.

03:32:42 19 THE COURT: So at the time of the filing, that may
03:32:45 20 have been proper. The issue may be whether or not that's
03:32:49 21 not been properly amended to reference his estate in the
03:32:56 22 present since there is an understanding that he has passed.
03:33:02 23 Is that right?

03:33:03 24 MR. KLISH: Yeah, Your Honor, I don't normally
03:33:06 25 deal...

03:33:07 1 THE COURT: I'm sorry, say that again.

03:33:08 2 MR. KLISH: I -- that makes sense, Your Honor.

03:33:12 3 That didn't occur to me, but that makes sense.

03:33:14 4 THE COURT: And I'm just walking back through it.

03:33:16 5 Judge Tally -- whenever I was going through the order

03:33:18 6 before, Judge Tally -- that was in response to Jay Allen's

03:33:22 7 motion; is that right?

03:33:23 8 MR. KLISH: It was. It's the same topic, though.

03:33:26 9 THE COURT: Okay.

03:33:27 10 MR. KLISH: And everyone has been made a party to

03:33:29 11 that action.

03:33:30 12 THE COURT: Okay. And Judge Gwyn was specifically

03:33:32 13 to Ms. Kathy Allen?

03:33:36 14 MR. KLISH: Yes, Your Honor.

03:33:37 15 THE COURT: All right. Anything else to -- Oh,

03:33:40 16 and then just in regards to statute of limitations, you're

03:33:44 17 saying that August 14th -- August 24th, 2016, to the

03:33:49 18 February 2020 would have been more than three years? Those

03:33:56 19 are the dates, right?

03:33:59 20 MR. KLISH: August 24th, 2016, is when the will

03:34:01 21 was probated and then three years from that is.,,

03:34:05 22 THE COURT: Nineteen, yeah.

03:34:07 23 MR. KLISH: Yes, sir. Math is not my strong

03:34:09 24 point.

03:34:12 25 THE COURT: Many people feel as though 2020 didn't

03:34:15 1 exist.

03:34:16 2 MR. KLISH: Right.

03:34:16 3 THE COURT: So just clarifying the facts.

03:34:18 4 All right. Thank you.

03:34:20 5 Ms. Allen, again, this is --

03:34:23 6 MS. ALLEN: Have you -- okay. Have you finished

03:34:24 7 asking him his questions?

03:34:26 8 THE COURT: Yes, ma'am. That's why I called on

03:34:27 9 you.

03:34:32 10 MS. ALLEN: Okay. Again, I had anticipated that

03:34:34 11 this would be -- not -- not that it would be anything

03:34:37 12 against you personally, that you -- that Judge Ridgeway

03:34:44 13 would view the documents. I had anticipated that someone

03:34:48 14 there, including you -- and that would probably be my

03:34:52 15 request today that we would do a continuance so that you

03:34:56 16 would have a chance to look at all of those things that

03:35:00 17 Anthony just said.

03:35:02 18 In a simple reply to him in rebuttal to what he

03:35:06 19 just said, I would say that he has provided a lot of

03:35:10 20 incorrect information. One of the things about -- if we go

03:35:15 21 back -- He's trying to make this a res judicata, collateral

03:35:21 22 estoppel case, and it's not that at all. For one reason,

03:35:24 23 among the documents sent to -- to Kellie Myers is that

03:35:30 24 Jay -- Jay's caveat that he -- that Anthony is trying to

03:35:36 25 promote as his reason for res judicata is that there was an

03:35:44 1 order by Judge Tally.

03:35:46 2 MR. KLISH: Objection, Your Honor. Ms. Allen --

03:35:49 3 MS. ALLEN: Anthony -- Anthony, I'm providing my
03:35:51 4 argument.

03:35:51 5 THE COURT: If he objects, I get to make the
03:35:53 6 ruling. I may tell him to hold off, but I have to make that
03:35:56 7 ruling.

03:35:57 8 What's the objection?

03:35:59 9 MR. KLISH: Your Honor, Ms. Allen likes to act as
03:36:01 10 Jay Allen's attorney. So to the extent that she's arguing
03:36:05 11 on behalf of Jay Allen's appeal of the will caveat, I
03:36:10 12 believe that that's inappropriate for her to do since she's
03:36:14 13 not an attorney.

03:36:14 14 THE COURT: Okay. I'll overrule that. The way
03:36:16 15 that I was hearing it is her just recalling the facts. I
03:36:20 16 mean, she can have awareness of what occurred since you made
03:36:22 17 an argument that there was -- that many of the same issues
03:36:28 18 were taken care of by Judge Tally in reference to Jay
03:36:32 19 Allen's case. So she is familiar with those facts and
03:36:36 20 comparing those to this motion since you're saying that her
03:36:39 21 motion should be dismissed because they were resolved -- or
03:36:43 22 the same issues were resolved by Judge Tally in Jay Allen's,
03:36:46 23 I think she's well positioned to go ahead and at least
03:36:49 24 suggest -- to argue that it's not -- or what's different.
03:36:54 25 If that's where she is going -- Of course, if she is trying

03:36:55 1 to represent him, then I agree, but, Ms. Allen, you can
03:36:58 2 proceed.

03:37:01 3 MS. ALLEN: Yes. What I was trying to say is that
03:37:03 4 that would not be res judicata. For one, Jay's case was --
03:37:09 5 and I'm not trying to -- those were among the documents sent
03:37:13 6 to Kellie Myers for this hearing today, because Anthony
03:37:16 7 proposes, I suppose without any interaction between myself
03:37:20 8 during this time he considers such a long time, to ignore
03:37:25 9 that there should have been some kind of communication about
03:37:29 10 it in our efforts to do so. But Judge Tally's order --
03:37:35 11 those were in the documents sent to Kellie Myers last week
03:37:39 12 that she -- that he sent a -- his appeal in -- and the court
03:37:49 13 there in Wake County -- I did meant to indicate that I am --
03:37:53 14 I am in the Maryland-D.C.-Virginia area here, in the D.C.
03:37:56 15 area. I am from North Carolina, but I don't live there now,
03:37:59 16 but I'm saying that because I needed to get -- to get on the
03:38:05 17 calendar for that, and I sent those to her at that time for
03:38:10 18 last week. And Jay's -- Jay's never got -- they sent back
03:38:15 19 his appeal notice saying that he required what we're calling
03:38:19 20 the G-O, which is the -- the verification for a lawyer for
03:38:27 21 his appeal. After Judge Collins entered his final order on
03:38:34 22 or about August 3rd and we got the order -- or Jay did, on
03:38:39 23 the 19th, he did file it and then they sent it back to him.
03:38:42 24 So the court there said they were not going to
03:38:46 25 file Jay's appeal because it needed the verification --

03:38:48 1 verification order, the lawyer verification. And that
03:38:53 2 verification came out of the 18 CV 01339 case that you --
03:39:04 3 that you were -- had some contention, therefore, a conflict
03:39:07 4 of interest. And so that's where the G-O order came out of.
03:39:11 5 So that means that Jay never actually got a chance to do any
03:39:14 6 of the things that he's talking -- that he wanted to do for
03:39:17 7 his appeal. And if Anthony is proposing that this is a res
03:39:25 8 judicata case, then Jay has not had his full day in court
03:39:28 9 from the appeal. And he would not have been required to do
03:39:30 10 that. By Rule 3, he should have been able to file the
03:39:33 11 notice of appeal. It should have gone there to the Wake
03:39:36 12 County court, got filed, and he was supposed to follow up
03:39:39 13 with the things for an appeal. And so -- But among those
03:39:42 14 things, he's trying to say, Anthony, that Judge Tally did
03:39:46 15 all this on the merits, and it never really was. And those
03:39:49 16 would be things that would at least go to Jay's caveat for
03:39:54 17 an appeal.

03:39:55 18 And among those things that Anthony keeps talking
03:40:00 19 about, there was a motion in the file for Jay to enjoin
03:40:03 20 everybody, myself and the other brother, who is Steve, the
03:40:06 21 one that died. Since Anthony has been handling all of
03:40:11 22 this -- last year, he died last year. Actually, I'm at a --
03:40:14 23 I'm at a loss for words because Anthony is trying to look as
03:40:17 24 if I -- I should have done something to these -- for the --
03:40:22 25 for the estate of my dead brother. And he never even -- he,

03:40:28 1 being Anthony, never even indicated in any way to myself or
03:40:33 2 to Jay that -- his name is Arthur -- was Arthur, but Arthur
03:40:39 3 Allen had passed. And so then he sends the -- when he
03:40:45 4 replies -- I had a lawyer there in North Carolina a couple
03:40:49 5 weeks ago and paid him to do the lawyer verification for
03:40:52 6 what we are here with the alignment of parties. And so
03:40:55 7 whenever -- whenever -- when Anthony went to answer the
03:40:58 8 continuance I was doing online with Lisa Tucker and them
03:41:02 9 last week, what he -- what he did is he changed the title,
03:41:08 10 the case title of the motion and of the case to not include
03:41:13 11 Arthur Allen. So he put Arthur L. Allen, et al., instead of
03:41:19 12 leaving it as it was, and now he comes to you and says,
03:41:23 13 well, she didn't include his estate.

03:41:24 14 I -- At this point I have no idea about the
03:41:26 15 estate. We tried to -- I tried to send emails to Anthony
03:41:30 16 about it so that we could do a discussion. And there
03:41:34 17 instead, he gets here and says, well, he has no obligation
03:41:37 18 to try to resolve any of this. At that time he could have
03:41:41 19 said, well, Arthur -- your brother -- your dead brother has
03:41:46 20 an estate and I'm handling it, but I don't think he did
03:41:49 21 that, because the brother he's talking about he's
03:41:52 22 representing here today, his name is Steve. And there's
03:41:55 23 some property there in Georgia that he -- but he only did
03:41:59 24 that probably about a month ago. And so he hasn't tried to
03:42:03 25 resolve any of this and it's not res judicata. So, for one

03:42:10 1 thing, Jay never got his appeal. And if we had, there were
03:42:13 2 motions in the -- in the filings that indicated we wanted to
03:42:18 3 get everyone on, all the parties involved.

03:42:21 4 Now, this 171 days, there may be some other
03:42:26 5 statute, but I don't think it would apply to me because for
03:42:29 6 one -- and you do have an obligation by chapter 28A -- and
03:42:34 7 I'm just trying to get some of the things that I found for
03:42:38 8 estates. By 28A, they never really even did that. Even
03:42:42 9 though there is a will, even one that they propose for Jay's
03:42:46 10 case, and he's been calling it res judicata or collateral
03:42:49 11 estoppel, they never even included everyone to summons us
03:42:54 12 either by what they call a 20-day, again, a solemn form or
03:43:00 13 either an attesting, and we are -- I am contesting by the
03:43:04 14 caveat the signatures.

03:43:06 15 I had -- I hired a lawyer there in two eighteen
03:43:09 16 who told me there was a problem with the will. Now, the
03:43:12 17 will may be there in North Carolina, and he's trying to make
03:43:16 18 it sound as if he can't read what I was trying to say in the
03:43:19 19 will -- in the caveat.

03:43:22 20 So there is a question of law and there are some
03:43:25 21 questions of concern about what Anthony's true finesse in
03:43:29 22 this case. He just wants to get it dismissed. Of course he
03:43:32 23 does, but I was trying to say that the brother in Georgia,
03:43:34 24 who he now claims he's representing him, they never told me
03:43:37 25 anything about the estate. I tried to send him emails and

03:43:42 1 so did a lawyer there a couple weeks ago to try to get some
03:43:46 2 heads-up on where we are with this, and he -- and he just
03:43:49 3 refused to do anything. And now he comes to you, as I said
03:43:52 4 a moment ago, and says, well, she's -- and even if there was
03:43:56 5 a statute of limitations, which I do not think it applies to
03:43:59 6 me, it would be more when I found out that there was nothing
03:44:02 7 going to happen, then I would have filed the -- I would have
03:44:06 8 filed the caveat.

03:44:07 9 There was supposed to be a case by 28A, as I
03:44:12 10 remember by the statute, for the administration of estates
03:44:15 11 that would have at that time been an official proceeding to
03:44:20 12 include myself, whenever -- whenever Arthur, my brother, is
03:44:25 13 dead, he passed -- I was told -- I haven't seen anything,
03:44:29 14 but I was told he passed. And, like I said, Anthony did
03:44:33 15 nothing in the last couple weeks or even couple of months
03:44:35 16 when I had the lawyer contact him about it. And, like I
03:44:38 17 said, now he comes and says, well, she didn't do anything
03:44:40 18 and the title is all wrong. And I was trying to say that
03:44:44 19 instead of leaving the title on the case as it was in the
03:44:48 20 proceeding and in the filings, he goes and does a sig and
03:44:56 21 puts it -- my brother's name and then et al., and now trying
03:44:59 22 to say, well, why didn't she come to us and ask about the
03:45:03 23 estate. I don't think he's doing his job and he hasn't. So
03:45:05 24 I think there's some questions and matters of concern.

03:45:09 25 Judge Tally's order is not -- was not on the

03:45:11 1 merits. I'm trying to do some of this myself and some of
03:45:13 2 this with a lawyer there in North Carolina. A Rule 41 for
03:45:17 3 failure to prosecute is not on the merits. And it -- and
03:45:21 4 these are some of the things that are in the documents I
03:45:23 5 sent to Kellie Myers that I really expect someone to look at
03:45:27 6 that and read, not just us sit here online in a virtual
03:45:30 7 hearing and trying to say, well, he said this on page one
03:45:33 8 and I said that on page two.

03:45:36 9 What I had anticipated and expected that someone
03:45:38 10 would look at all of those documents and say, yes, I think
03:45:41 11 you're right, you know, not that we can just stand up before
03:45:44 12 you and do that. So it's not res judicata. It hasn't been
03:45:48 13 done before. There is not a statute of limitations. And if
03:45:51 14 we're talking about a statute of limitations, I will look at
03:45:54 15 when it was that I learned that it was not going -- that the
03:45:58 16 caveat Jay filed was not getting the proper attention, and
03:46:03 17 we had the motion then to enjoin everybody, so you can't say
03:46:07 18 that.

03:46:07 19 I think this needs to be a thorough look at the
03:46:09 20 file, not -- and to dismiss it is not warranted. We should
03:46:15 21 do the align the parties motion that I had the lawyer do the
03:46:18 22 verification of and paid him to do. And then if -- if --
03:46:25 23 and then he provides his response as required. But before
03:46:28 24 that, I think we need to align the parties as they are; that
03:46:33 25 is, my brother, who is Arthur, he's dead and his estate, we

03:46:36 1 need to do it, add him as an estate instead of just his
03:46:40 2 name. We need to add Steve, the brother who lives in
03:46:43 3 Georgia, who purports that my mother gave him the house in
03:46:47 4 Georgia there, and Jay and I, who are the caveators, align
03:46:50 5 the parties in that matter and then provide -- by 3133 he
03:46:58 6 can give his reply to whatever is in that caveat on paper.
03:47:03 7 That's what I think we need to do.

03:47:04 8 There are some questions again of -- of -- of --
03:47:05 9 of children asked here and a question of law. And, as I
03:47:11 10 said, among those documents, I sent -- I sent Kellie Myers
03:47:14 11 two sets of documents, one for Jay because the things with
03:47:18 12 Judge Tally were not -- were not -- didn't allow his appeal.
03:47:22 13 If he allows appeal, these will be things that would be in
03:47:26 14 it, why the motion for injunction was not there -- or
03:47:29 15 enjoinder was not there and then this one for mine. And
03:47:33 16 whenever I realized that this was going nowhere with
03:47:39 17 Anthony, and my brother wasn't dead then, and so that is why
03:47:44 18 I believe that -- there's no reason for my motion to be out
03:47:49 19 of a statute of limitations. It should be a look at -- a
03:47:53 20 look at what the merits are for that and when I found it
03:47:57 21 out.

03:47:58 22 Now, there is some verbiage there in 28A for
03:48:01 23 administrations and -- in the Article 31, I think it's
03:48:06 24 Article 1. I'm just saying all of that to say that the
03:48:09 25 motion is not warranted. If he has a rebuttal, these things

03:48:14 1 he just said today, they should be put on paper and not tell
03:48:18 2 you to look on page five, look on page six, but to put it
03:48:21 3 down in writing as a responsive reply. That's supposed to
03:48:26 4 be allowed.

03:48:27 5 And then the next thing is Jay still deserves his
03:48:30 6 caveat appeal. We know and I was told by one lawyer -- and
03:48:35 7 I don't want to bring anyone in here that's not actually in
03:48:39 8 the meeting -- that the appeal would be a defensive reply.
03:48:45 9 So there would not really be a need --

03:48:47 10 THE COURT: Ms. Allen, if you're making an
03:48:48 11 argument -- that would go to his prior objection that if
03:48:51 12 you're making an argument about what should happen in
03:48:54 13 Mr. Allen's case, then that's more likely to be considered
03:48:58 14 representing him, but arguing what happened in his case, how
03:49:03 15 it impacts your case, that's different. But if you're
03:49:09 16 saying about what we need to do in Jay's case, that's what
03:49:11 17 --

03:49:13 18 MS. ALLEN: Okay. Hold on.

03:49:15 19 What I'm trying to get you to understand is that
03:49:17 20 this is not res judicata. Jay has not had his day in court.
03:49:22 21 He's allowed his appeal.

03:49:24 22 THE COURT: Yes, ma'am. What I'm --

03:49:25 23 MS. ALLEN: And those documents were sent to her.

03:49:27 24 THE COURT: Caitlin, can you mute her?

03:49:31 25 MS. ALLEN: I'm finished.

Appendix B -Exhibit 1 - Order - WCSC Judge Rozier's
November 18, 2021 Denying Appellant's Caveat2

NORTH CAROLINA

WAKE COUNTY

KATHY ALLEN,

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

16-E-1390

2021 NOV 18 PM 2:10

WAKE CO., N.C.S.C.

v.

ARTHUR ALLEN, et al.,

Caveator,

Propounders.

BY _____

ORDER

THIS MATTER came on to be heard and was heard before the undersigned Superior Court judge presiding on November 16, 2021 at a Session of Superior Court for Wake County held virtually upon the Caveator's Motion to Align Caveat Parties and Motion to Continue and the Propounder's Motions to Dismiss pursuant to N.C.G.S. 1A-1, Rules 12(b)(4),(6), and (7). Appearing via Webex were Caveator Kathy Allen and Attorney Anthony Klish for Propounders.

The Court having considered the arguments of both parties, having reviewed the pleadings and filings of record, having reviewed the submissions, and having reviewed the prior orders of The Honorable Mary Ann Tally and The Honorable G. Bryan Collins filed related to the parties, finds that the motion to dismiss should be allowed.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. Caveator's motion to continue is denied.
2. Propounder's motion to dismiss is allowed.
3. This Action is hereby dismissed with prejudice.

This the 18th day of November, 2021.


The Honorable Vinston Rozier, Jr.
Superior Court Judge Presiding

Appendix B -Exhibit 1 - Order - WCSC Judge Rozier
November 18, 2021 Denying Caveat2

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document (order denying Caveator's motion to continue and granting propounder's motion to dismiss) was served on the persons indicated below by email, and or postage prepaid, addressed as follows:

Kathy R. Allen
26 55th St
Washington, DC 20019
and
2526 Poole Rd
Raleigh, NC 27610
Caveator

Jay Allen
2526 Poole Rd
Raleigh, NC 27610
Propounder

Anthony A. Klish
anthony@magnishoward.com
Attorney for Defendant L. Allen Allen

This the _____ day of November, 2021.



Shanda R. Smallwood
Judicial Assistant – 10th Judicial District
Shanda.R.Smallwood@nccourts.org

Kathy Allen

From: Kathy Allen <allenk1101@comcast.net>
Sent: November 30 2021 3:20 PM
To: 'Myers, Kellie Z.'
Cc: 'Anthony Klish'; 'allenk1101@comcast.net'
Subject: Case 16E1390 Allen v. Allen Caveat Hearing - Calendar request and Rule 52 and Rule 59 Motion for reconsideration of November 16, 2021 hearing
Attachments: FiletKRARule52-59MFRCaveat2020-16-E-001390-11-30-2021.pdf; FileKRANoticeOfHearingMFRRule59Caveat11-24-2021.pdf; SendKRACalendarRequestHearingRule52-11-30-2021-16-E-001390.pdf

Kellie:

As you know I had to send E-mails for this hearing held November 16, 2021. By the dismissal to Propounders MTD I would be allowed 10 days for a Rule 52 and 59 motion and attached is the motion, and notice of hearing by Webex for January 11, 2022, and the calendar request. I included the propounders' attorney in the E-mail.

Per Judge Gwynn's Order please provide these documents to Judge Ridgeway (and/or now that Judge Rozier says he was assigned to the case I suppose it should also go to him) and so it is filed, and in the case filings, etc.

Thank you for help on getting it calendared..

I think you usually send E-mails out when it is scheduled.

Send on behalf of Caveator:

Kathy R. Allen
allenk1101@comcast.net
(202) 399-6225
M-F 12:00pm-5:30pm EST
(Continues to be *pro se*)

Kathy Allen

From: Kathy Allen <allenk1101@comcast.net>
Sent: December 01 2021 12:43 PM
To: 'Myers, Kellie Z.'
Cc: 'Anthony Klish'; 'allenk1101@comcast.net'
Subject: FW: Case 16E1390 Allen v. Allen Caveat Hearing - Calendar request and Rule 52 and Rule 59 Motion for reconsideration of November 16, 2021 hearing
Attachments: FileKRANoticeOfHearingMFRRule59Caveat11-24-2021.pdf; FiletKRARule52-59MFRCAveat2020-16-E-001390-11-30-2021.pdf; SendKRACalendarRequestHearingRule52-11-30-2021-16-E-001390.pdf
Importance: High

Kellie:

(I received your E-mail below late last night and wrote the reply below to send to you today, so it would not be an after hour E-mail to you. Also I discussed this with a NC lawyer who agrees the 52, 59 is available relief for Judge Rozier's November 18, 2021 Order. For the timeline to the 10 days I am not doing a lawyer verification at this time for the cost to do so, and by Judge Gwynn's Order could and was to send the requested for documents filing to you for Judge Ridgeway (now Judge Rozier per his saying he was now assigned to this to view. Being so):

This is a Rule 52, 59 motion that requires Judge Rozier and/or Judge Ridgeway to view and provide an Order. It is being filed within 10 days of Judge Rozier's November 18, 2021 Order. It should be provided to him and/or Judge Ridgeway. I know there was no pending action after the Order above, which it seems you are saying nothing follows per that hearing.

That is why I sent this as a new motion, hearing notice, and calendar request as a new filing. After he and/or Judge Ridgeway provides a hearing as requested on it and an Order if he or Judge Ridgeway does not amend November 18, 2021 Order is to grant the relief in this 52, 59 motion **the appellate Rule 3 Notice of Appeal** would be the next filing to send you at Wake Court Superior Court for this my Caveat.

Per appellate Rule 3. **Appeal in Civil Cases—How and When Taken** (a) **Filing the Notice of Appeal.** Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule... (c) **Time for Taking Appeal.** In civil actions and special proceedings, a party must file and serve a notice of appeal:... (1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or (2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that (3) if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c)...."

Appendix B-Exhibit 4-Appellant's E-mail (included motion) to WCSC TCA
Requesting Judge Rozier's Rule 52 and Rule59 Motion November 30, 2021

Being so the documents I sent for the Rule 52, 59 should be ruled. I think it is appropriate and these should be sent to Judge Rozier and/or Judge Ridgeway for ruling and an Order. Resending the attachments to do so. They should be filed as such, so they are in the record for any appeal if required later.

Not sure, but I think you should just say to Judge Rozier and/or Judge Ridgeway as above to I am requesting and sending for filing this Rule 52, 59 motion to the November 18, 2021 Order. Being so this motion must be filed and accepted by you (them) for filing as timely(to be sent to you per Judge Gwynn's Order) and was within 10 days. Please send and docket it as required for the file. Please reply ASAP today if possible, as I might not be at my E-mail all day, and should make sure this gets attention by the 10 day timeline—i.e. is just that it gets added to the filings. Again I would just send this to the judge that you have received a 52, 59 motion for that Order doing so I think covers both of us to you for its receipt and for me to maintain the notice of appeal timeline as required..

Send on behalf of Caveator:

Kathy R. Allen
allenk1101@comcast.net
(202) 399-6225
M-F 12:00pm-5:30pm EST
(Continues to be *pro se*)

From: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>
Sent: November 30 2021 04:43
To: allenk1101@comcast.net
Cc: 'Anthony Klish' <Anthony@magninshieldow.com>
Subject: RE: Case 16E1390 Allen v. Allen Caveat Hearing - Calendar request and Rule 52 and Rule 59 Motion for reconsideration of November 16, 2021 hearing

Kathy,

Judge Rozier has issued a final ruling and there is nothing further to be calendared for hearing.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District – Wake County
PO Box 351, Raleigh, NC 27602
O 919-792-4775
www.NCcourts.gov/WakeTCA



Clerk and court offices in the Wake County Courthouse and Justice Center remain open for business.
Please visit our web page for safety policies and important announcements.

From: Kathy Allen <allenk1101@comcast.net>
Sent: Tuesday, November 30, 2021 3:20 PM

Appendix B-Exhibit 4-Appellant's E-mail (included motion) to WCSC TCA
Requesting Judge Rozier's Rule 52 and Rule59 Motion November 30, 2021

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Cc: 'Anthony Klish' <Anthony@maginnishoward.com>; allenk1101@comcast.net

Subject: Case 16E1390 Allen v. Allen Caveat Hearing - Calendar request and Rule 52 and Rule 59 Motion for reconsideration of November 16, 2021 hearing

Kellie:

As you know I had to send E-mails for this hearing held November 16, 2021. By the dismissal to Propounders MTD I would be allowed 10 days for a Rule 52 and 59 motion and attached is the motion, and notice of hearing by Webex for January 11, 2022, and the calendar request. I included the propounders' attorney in the E-mail.

Per Judge Gwynn's Order please provide these documents to Judge Ridgeway (and/or now that Judge Rozier says he was assigned to the case I suppose it should also go to him) and so it is filed, and in the case filings, etc.

Thank you for help on getting it calendared..

I think you usually send E-mails out when it is scheduled.

Send on behalf of Caveator:

Kathy R. Allen

allenk1101@comcast.net

(202) 399-6225

M-F 12:00pm-5:30pm EST

(Continues to be *pro se*)

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

Appendix B-WSCS-Exhibit 4A-E-mail1 To TCA
Requesting Rule 52 and Rule59 - December 14, 2021

Kathy Allen

From: Kathy Allen <allenk1101@comcast.net>
Sent: December 14 2021 1:48 PM
To: 'Myers, Kellie Z.'
Cc: 'Anthony Klish'; 'allenk1101@comcast.net'
Subject: Notice of Appeal - Caveator2 Case 16E1390 Allen v. Allen Caveat Hearing - November 18, 2021 Order
Attachments: FileKRANoticeOfAppealCaveat12-14-2021.pdf
Importance: High

Kellie:

Since I do not have your timeline to get things to Judge Ridgeway/Judge Rozier for the Rule 52, 59 sent for this Order and to maintain the appeal timeline I am sending the attached document for Judge Ridgeway/Judge Rozier as the notice of appeal for filing.

I sent a Rule 52, 59 motion to you on 12-01-2021 and another E-mail yesterday 12-13-2021 as a follow-up to it now two weeks (14 days) ago.

So to maintain the timeline to the appeal and so you (the court) have receipt timely I am sending the notice of appeal to Judge Rozier's November 18, 2021 Order and in it reserve and do not waiver to withdraw and/or resend as required the notice of appeal when/after the Rule 52, 59 is ruled.

This I think covers the appeal 30 days to that Order---thus a file/stamp of the notice of appeal so transcripts can be requested timely. I included the Propounders attorney in this E-mail.

Sent on behalf of Caveator:

Kathy R. Allen
allenk1101@comcast.net
(202) 399-6225
M-F 12:00pm-5:30pm EST
(Continues to be *pro se*)

**APPENDIX C - Decisions of the State Supreme Court Denying
Review**

APPENDIX C

Appendix C- Exhibit 1 NCCOA - Order Deny Without Prejudice Appellant's Motion to Transmit NCCOA #22-276 Record to NCSC for #84P23 - May 12, 2023.....	122
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North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

From Wake
(16E1390)

Appendix C- Exhibit 1 NCCOA-R Order Deny Without
No. 22-276 Prejudice Appellant's Motion to Transmit NCCOA #22-276
Record to NCSC for #84P23 - May 12, 2023

KATHY ALLEN,
Caveator,

v.

ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH

Propounders.

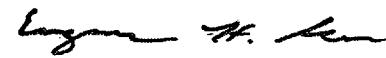
ORDER

The following order was entered:

The motion filed in this cause on the 9th of May 2023 and designated 'Appellant's Motion to Request NC-COA Transmit the Record for Case #22-276 to the NC-Supreme Court (NCSC) for Case #84P23' is denied without prejudice.

By order of the Court this the 12th of May 2023.

WITNESS my hand and official seal this the 12th day of May 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)
Ms. Mary Flagler Allen
The Honorable Clerk of Superior Court, Wake County

Supreme Court of North Carolina

Appendix C-Exhibit 2 NCSC Order NCSC Dismissal of #84P23

KATHY ALLEN, Caveator

v

ARTHUR ALLEN, STEVE R. ALLEN, and ANTHONY A. KLISH, Propounders

From N.C. Court of Appeals
(22-276)
From Wake
(16E1390)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Caveator on the 17th of March 2023 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

"Dismissed ex mero motu by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

Upon consideration of the petition filed on the 17th of March 2023 by Caveator in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

The following order has been entered on the Motion for Extension of Time to File Brief filed on the 11th of April 2023 by Caveator:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

2016

The following order has been entered on the motion filed on the 17th of April 2023 by Caveator to Supplement the Record:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

The following order has been entered on the Motion for Extension of Time to File Brief filed on the 7th of June 2023 by Caveator:

"Motion Dismissed as moot by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

The following order has been entered on the motion filed on the 12th of July 2023 by Caveator for Immediate Arbitration:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

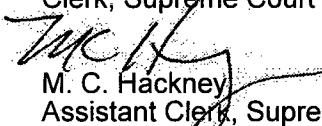
The following order has been entered on the motion filed on the 17th of July 2023 by Caveator for Entry of Default:

"Motion Dismissed by order of the Court in conference, this the 30th of August 2023."

**s/ Allen, J.
For the Court**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 5th of September 2023.



Grant E. Buckner
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:

North Carolina Court of Appeals

Ms. Kathy R. Allen, For Allen, Kathy - (By Email)

Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al - (By Email)

Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R. - (By Email)

Ms. Mary Flagler Allen

West Publishing - (By Email)

Lexis-Nexis - (By Email)



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

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One West Morgan Street
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(919) 831-3600

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

No. COA22-276-1

KATHY ALLEN,
Caveator,

Appendix C-Exhibit 3 Order
NCCOA For NCSC's Order - Dismissal of #84P23
Notice Of Appeal

v.

**ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH**

Propounders.

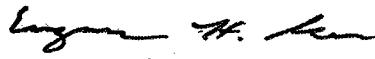
From Wake
16E1390

ORDER

NOTICE OF APPEAL BASED UPON A CONSTITUTIONAL QUESTION filed on the 17th of March 2023 was Dismissed ex mero motu by order of the North Carolina Supreme Court on the 5th day of September 2023, and same has been certified to the North Carolina Court of Appeals.

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court, Wake County, North Carolina that the North Carolina Supreme Court has Dismissed ex mero motu the NOTICE OF APPEAL BASED UPON A CONSTITUTIONAL QUESTION filed by the Caveator in this cause.

WITNESS my hand and official seal this the 30th day of October 2023.


Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
Ms. Kathy R. Allen, Pro Se, For Allen, Kathy
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R.



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

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P. O. Box 2779
Raleigh, NC 27602

No. COA22-276-1

Appendix C-Exhibit 4 Order

KATHY ALLEN,
Caveator,

NCCOA For NCSC's Order -Dismissal of #84P23
Discretionary Review

v.

**ARTHUR ALLEN, STEVE R. ALLEN,
and ANTHONY A. KLISH**

Propounders.

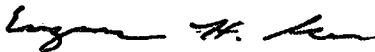
From Wake
16E1390

ORDER

PETITION FOR DISCRETIONARY REVIEW to review the decision of the North Carolina Court of Appeals filed on the 17th of March 2023 was Dismissed by order of the North Carolina Supreme Court on the 5th day of September 2023, and same has been certified to the North Carolina Court of Appeals.

IT IS THEREFORE CERTIFIED to the Clerk of Superior Court, Wake County, North Carolina that the North Carolina Supreme Court has Dismissed the PETITION FOR DISCRETIONARY REVIEW filed by the Caveator in this cause.

WITNESS my hand and official seal this the 30th day of October 2023.



Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Kathy R. Allen, Pro Se, For Allen, Kathy
Mr. Anthony A. Klish, Attorney at Law, For Klish, Anthony A., et al
Mr. C. Jordan Godwin, Attorney at Law, For Allen, Steve R.

IN THE SUPREME COURT OF NORTH CAROLINA

No. #84-P23

10th DISTRICT

Appellant/Caveator2 Kathy R. Allen
v.

Appellees Respondent 1:Propounder 1
Arthur L. Allen (Deceased)

Respondent 2: Propounder 2 [sic] Steve R. Allen
Respondent 3: Propounder 3 Anthony A. Klish
Arthur L. Allen et. al.[sic]

) On Appeal from: NC-COA COA22-276
) and Wake County Estates Division
) Case: #16-E-1390
) IN THE MATTER OF THE ESTATE OF:
) REBECCA BOWDEN ALLEN JOHNSON
) Deceased Case #16-E-001390 (caveat for
estate) (additional Wake County filings
pending #18-CVS-013119, special hearings
and estate filings #18 SP1746 (foreclosure),
#17-SP-1397 (petition for administrator)),
Petition #17SP000769 File No. From 06-E-
1397 (this 'E' number was provided with
Petition and might be incorrect)'

APPELLANT'S MOTION IN SUPPORT OF AND FOR ENTRY OF DEFAULT
AGAINST APPELLEE1 ARTHUR L. ALLEN AND HIS OWN ESTATE FOR
THIS CASE #84-P23

To the honorable North Carolina Supreme Court:

WHY ENTRY OF DEFAULT IS REQUESTED

1. Appellant (Caveator2), Kathy R. Allen, who is having to proceed *pro se* provides this motion and is not being filed for any frivolous reasons and requests by R. 37, N.C. App. R. 2, N.C. G.S., FRCP Rule 55, by R. 36 to the Wake County Superior Court judge or *sua sponte* by this court or by a more pertinent rule or the court's inherent power to grant it based on the estate actions and the #22-276 case and now in this court as #84-P23 as an appeal of NC-COA's February 7, 2023 Order (*Doc. #18*) and March 3, 2023 (*Docs. #40-42*) for the Caveat2 the Appellant (Petitioner) filed and properly served February 13, 2020 and summons (see NC-COA R. p. 8 "f[iled] o/a April 16, 2020 (R. pp. 19-25) in the Wake County Superior Court case (#16-E1390)

for the Appellant's mother's (who passed in 2016) estate, which the Caveat2 was for, and subsequent eFilings and efforts to Appellee1's (Respondent1) wife and Appellee3 (Respondent3) for who is representing or defending Appellee1.

2. Appellee1 (Appellant's sibling was personal collector for the estate, who seemingly hired Appellee3, Anthony A. Klish sometime mid-2017 as his attorney for it. Appellee3 it seems served and submitted filings to the Wake County Superior Court for Arthur L. Allen until o/a late 2020 when the Appellant was told he (Appellee1 her sibling) had passed o/a late 2020. This attorney so indicates this when the Appellant indicates this as Appellee1's is not at the November 16, 2021 hearing and is in the NC-COA transcript record (T. p. 9) (see NC-COA transcript filed) with Judge Rozier and by his November 18, 2021 Order dismissed her Caveat2 purported by Appellee3 (his tribunal attorney) mostly as a statute of limitation (SOL) defense in the Wake County Superior Court hearing's transcript record (T. p. 10 lines 18-19) indicates Appellee1 had passed.

3. It is clear Appellee2/Propounder2 (Appellant's other sibling Steve R. Allen) although the Appellant does not know how it came about or to any authority about or for it Appellee3 is purporting after Appellee1 passed to be representing now just Appellee2 and himself (Appellee3), but he concedes as *supra* there is a local rule R. 25 and/or R. 33/R. 38 deficiency, and the NC-COA record affirms the Appellant is correct about the R. 33/R. 38 and Appellee3's ignoring the necessary party (T. p. 11 lines 9-13) misleading then in 2021 and later in the NC-COA filings about who is defending and the requirement for someone to defend Appellee1 in the NC-COA and now this N.C. Supreme Court #84-P23 case followed with Appellee3 and C. Jordan Godwin of BritonLaw.com adding Appellee1's wife on the service, but doing nothing and ignoring it.

4. Indeed Appellee2 (Steve R. Allen) ignored and has not had any such communications with or for the estate among the siblings (Petitioners) after or before Appellee1 passed or to the estate for their mother's GA property—just for some reason and to some purported representation had Appellee3 attend the November 16, 2021 for him—but Appellee1 was and is still unrepresented and not defending the case(s), and Appellees2/Appellee3 provide no authority to, for or about

Appellee1 not defending or who is to be defending him (but again he and C. Jordan Godwin of BrittonLaw.com adding Appellee1's wife) to the NC-COA eFilings suggesting it is service and is by mail. But also concedes and are his misrepresentations about the merits of the case, and requirement for a necessary party (R. 33/R.38) when the Appellant filed motions them).

5. The Appellant in the July 25, 2022 NC-COA notice of appeal refutes the Wake County Superior Court's (Judge Rozier's) Order on the SOL as incorrect for various reasons, and in the March 17, 2023 notice of appeal and the successive June 14, 2023 N.C.G.S. § 7A-30 and § 7A-31.1 filings for this case #84-P23. But more than that the transcript indicates the Appellant's efforts to such unrepresented party and in subsequent NC-COA filings after the NC-COA appeal was filed to this deficiency and asking to and for who was defending Appellee1. Indeed Appellee2 (Steve R. Allen)'s should be denied anything except what the Appellant's Caveat2 asks for as relief and is because of his silence about Appellee1's representation in not defending the #22-276 case and now this #84-P23 appeal and to his role—clearly he is not representing Appellee1 and has no and purports no official authority to do so or that provides authority to him for the N.C. homestead property. See Rule 55 (and FRCP Rule 55) see provides for this motion [<https://benchbook.sog.unc.edu/sites/default/files/pdf/Default%20Judgment%20%28Rule%20of%20Civil%20Procedure%2055%29.pdf>] and citing *Ruiz v. Mecklenburg Utils* (2008)

Appellant's NC-COA eFilings/Service to Appellee1 Were Not Answered

6. That being so it seems Appellee3 (who was his tribunal lawyer) and later C. Jordan Godwin of BrittonLaw.com added Appellee1's wife's (Mary Flager Allen) name as a party to the NC-COA docket and indicated they were properly serving copies of their court filings to the Appellee1 to his wife (purportedly as Appellee1's own estate representative). Being so the Appellant also began adding her to the NC-COA court filings. But before that in her efforts to

the Caveat2, on the November 16, 2021 hearing and efforts to Appellee3 (his attorney) after being told of Appellee1's death had also in 2020 and in 2021 tried to call Appellee1's wife whose voice message came on, so the Appellant left her a message about the court case—but Appellee1's wife did and has not called her back. To save time and for number of pages in this filing all of these 'returned' service documents are not included, but can be provided to the court. See Exhibits 2-4 (Filings Mar27-2023, Filings May19-2023, Filings May14-2023).

7. The Appellant also called Appellee1's wife again after that at least two other times and the phone voicemail did not come on or disconnected as an invalid phone. The Appellant can provide the approx. dates of these 2020-2021 and efforts into 2022 and 2023 calls to the court if needed—but Appellee3 is well-aware of the N.C. App. R. 33 and R. 38 deficiency—but ignored it and misrepresented this as a necessary party to the court or to somehow correct it—again Appellee3 and C. Jordan Godwin of BrittonLaw.com—continued doing so 'without a word' to or that it should be corrected and was required. Appellee3 did not correct or so indicated in the November 16, 2021 or since that the N.C. App. R. 33 and R. 38 should be corrected or do so by Wake County Superior Court local R. 25 or similar rule (see hearing's transcript record (T. p. 10) he had passed.

Appellant's Other Sibling's Caveat1's Contest of the Will

8. Indeed Appellee1's wife was or should have been knowing of the Appellant's and Appellee1's mother's passing in 2016 and of Appellee1 in 2016 having to do things as the 'personal collector' of her estate and into 2017 when Appellee3 o/a February 2017 filed #17-SP-1397 (petition for administrator) in Wake County Superior Court and the Appellant's other sibling filing Caveat1 o/a July 7, 2017 and of Appellee1's attending hearings for it into 2018, but also there was the mortgage lender's hearing o/a November 5, 2018 for case #18 SP1746 (the foreclosure) where the Appellant paid up the foreclosure of approx. \$15,000.00—thus Appellee1 had been properly summoned Caveat2 in February 2020. Since his passing as supra and in eFilings

to Appellee1's wife by regular certified post-office mailings as recent as o/a October 27, 2022 and into 2023 and as of July 5, 2023 (returned with 'refused' or 'return to sender' written on them).

9. But Appellee2/Appellee3 and C. Jordan Godwin of BrittonLaw.com (purporting to be serving as the appellate attorney) were served by eFiling (who also included Appellee1's wife in the NC-COA as being sent by post office mailings), But if the Appellant's mail to Appellee1's wife were 'returned' and not received so were Appellee3/C. Jordan Godwin of BrittonLaw.com's. Indeed this is both Appellee3 (tribunal attorney) and C. Jordan Godwin of BrittonLaw.com misrepresentations to the NC-COA and later to this court who instead requested a motion to dismiss and is both of them ignoring the N.C. Appellate rules for R. 33 and R.38 deficiencies for Appellee1 as a necessary party—but is unrepresented. Appellee2 and Appellee3 are well aware of his passing—Appellee1 was properly served about Caveat2 in 2020 and by the Appellant's subsequent mailing to the last address Appellant had for Appellant1 and his wife—Both Appellee2/3 had more access to the Appellee1's wife for additional service and for who would be representing Appellant1 in the NC-COA and now this #84-P23 appeal than did the Appellant. Clearly Appellee2 (Steve R. Allen) will have to abide by this motion for entry of default against Appellee1.

10. The Caveat2 see pp. 4- ¶7 provided separate (not joint liability) claims against Appellee1, p. 5 ¶8 Appellee2, and p. 5 ¶9 Appellee3. Id p. 7 ¶¶22-24 provided the claims as separate ones against each of the Appellees/Respondents, and separately as to the NC and GA properties and were among other things to Appellee1's and Appellee3's breach of fiduciary duty for estate administration of the 'Will'—which the probate division has as 'incomplete'. See *id* ¶24 Appellant in the Caveat requested "...mediation or arbitration...." So the claims are available in the Caveat2 as sum certain or similar that determines the requested compensation. Id p. 4 ¶3 "...See McGill v.

Bison Fast Freight, 96 S.E.2d 438 (N.C. 1957) unreasonable that they cannot be characterized as mere errors in judgmentOrdinarily, an executor or administrator has the right to compromise any disputed or doubtful claim of his decedent provided he acts honestly and exercises the care of an ordinarily prudent person....”

Appellant/Caveat2 ‘Will’ Proceeding

11. This case #84-P23 followed after NC-COA’s February 7, 2023 dismissal of the Caveat2 and May 2023 motions for *en banc rehearing* and to the motion requesting when the NC-COA would provide the proper R. 38 opinion. But as of this motion for entry of default Appellee1 still remains unrepresented, not appearing by his wife or estate and into July 2023 unanswered post-office service of the filings for this appeal #84-P23 and for case #22-276. His tribunal attorney (Appellee3) had ample time to contact, discuss and find and discuss the R. 33 and R. 38 with Appellee1’s wife or Appellee1’s estate or with Appellee2 (his sibling). Indeed it is clear both Appellee3 and C. Jordan Godwin of BrittonLaw.com (attorney for the #22-276) also just ignored it instead (and by *Smith v. Barney* 1980 as officers of the court) did so without a word or to the court and their knowing Appellee1 and/or his estate was not being represented.

12. Being so this motion for entry of default is filed against Appellee1 and provides that:

- (1) Caveat2 filed February 13, 2020 is granted and the Rule 12(b)(4), Rule 12(b)(6), and 12(b)(7) dismissal Order reversed.
- (2) Caveat2’s relief was that Appellee1 provide their mother’s N.C. homestead and other real estate property equally to (Arthur L. Steve R., Kathy R, and Jay K. Allen).
- (3) Caveat2’s relief was that to complete dividing this as ‘equal stripes’ for dividing the estate property is/was that the siblings can offer to ‘buy’ each or each other’s entitlement out. The other siblings can have 30 days to settle among themselves.
- (4) Caveat2’s relief was for a Trial by jury and Compensation for \$15,000.00 for the mortgage payments Appellant paid o/a Nov 7, 2018 and in [2019] for the mortgage to be paidt and paying \$1,031 monthly since to pay the mortgage payment, and total relief

of \$75,000 [of the payments see (9-11) *infra* for the reimbursement of the mortgage payments] from Respondent 1 and his lawyer Respondent 3 as compensation for the claims against them. Respondent 1 or his estate can settle this amount by using his 'equal stripes' being granted to him or by another agreeable settlement of these amounts within 30 days with the Appellant.

- (5) Granting this as the default of Appellant1 leaves ½ (one-half) of \$75,000 or \$37,500 for Respondent3 to pay.
- (6) Granting this as the default of Appellant1 leaves Respondent3 to provide \$37,500 for the Respondent3 claims among them negligence, legal malpractice and N.C.G.S. 75-1.1 (and as Unfair and Deceptive Trade Act violations) claims to pay or so the Appellant recovers or by another agreeable settlement amount with the Appellant for these amounts. The court can grant a 30-day stay of the appeal to allow time for him to do.
- (7) Granting this as the default of Appellant1 leaves Respondent3 to pay for the claims against Respondent3 including negligence, legal malpractice and N.C.G.S. 75-1.1 (and as Unfair and Deceptive Trade Act violations) claims to Appellant to recover the \$4,700 paid in 2018 to N.C. lawyer1 and at least \$5,000 paid to lawyer2 between 2019 to July 2023 or by another agreeable settlement with the Appellant with the Appellant within 30 days of these amounts. The court can grant a 30-day stay of the appeal so he can do.
- (8) Granting this as the default of Appellant1 leaves Respondent2 (Steve R. Allen) to receive equal stripes among the siblings of their mother's GA real property. The other siblings can have 30 days to settle their equal stripes of this property with Respondent2, e.g. buy out each other.
- (9) Granting this as the default of Appellant1 allows Appellant entitlement to be reimbursed for any and all mortgage payments on N.C. estate property that were paid for between 2017 and December 31, 2018. The Appellant can accept this as a conversion of the N.C. homestead deed to her name as an in full reimbursement and ownership amount or as other acceptable means to her to be monetarily awarded.
- (10) Granting this as the default of Appellant1 allows Appellant entitlement to be reimbursed for any and all mortgage payments on N.C. homestead property that were paid between 2019-2023. The Appellant can accept this as a conversion of the N.C. homestead deed to her name upto and as full reimbursement and ownership or another acceptable means to her to be monetarily awarded.
- (11) Granting this as the default of Appellant1 allows Appellant entitlement to be reimbursed for any and all extra fees paid for the N.C. homestead property that were paid between 2019-2023. The Appellant can accept this as a conversion of the N.C. homestead deed to her name upto and as full reimbursement and ownership or awarded another acceptable means to her to be monetarily awarded.

DENY APPELLEES ANY COSTS AND LAWYER FEES AND PURPORTED SANCTIONS
FOR HAVING TO AND TO REPLY TO THIS MOTION OR APPEAL

13. It is clear Appellees misrepresented the status of the Appellant's mother's 'Will' and the Appellant's efforts to get this case on-track, for estate administration to each siblings stripes of the estate. Appellees (and Appellee1 before he passed and Appellee2 and Appellee3 before and since Appellee1 passed) had several opportunities to correct their wrong but continued their conduct and misrepresentations. Appellees also 'without a word' to correct the deficiency of the requirement for the R.33/R.38 and merits they continued their wonton conduct to not allow due process for the #22-276 case and this appeal. Appellees must be held accountable, and this case and appeal viewed for its merits and be denied any costs for this motion or appeal, because it is their conduct to the 'Will' on the Appellant's mother's estate not the Appellant's that cause the filing of the Caveat2 in Wake County Superior Court February 13, 2020, and the #22-276 appeal. This entry of default will close the question of the Appellee1's sole entitlement to their mother's N.C. homestead property and Appellee2's to GA property by the 'Will' and instead as equal stripes to the siblings.

APPELLANT RESERVES AND DOES NOT WAIVER FILING FOR EQUITABLE RELIEF IN THIS COURT, U.S. DISTRICT COURT, U.S. DISTRICT COURT OF APPEALS OR SIMLIAR IF THIS DEFAULT MOTION IS NOT GRANTED

14. By this motion for entry of default if the default judgment is not granted the Appellant wishes and reserves to file for equitable relief and protection of her rights to her mother's 'Will' and Appellees' interference with the inheritance of it (as in the Caveat2) and to her large monetary loss at the hands of the Appellees and to Appellee3's role in it (being so the Appellees' conduct is not excusable), and usually relief is by federal statute as U.S. Code 1983 to the U.S. District Court (Eastern/Western Districts and U.S. 4th Circuit Court of Appeals.

GRANTING THIS ENTRY OF DEFAULT MOTION

15. With or without the Appellees' consent the Appellant thinks and justice will serve her and her mother's estate by providing that Appellee1 Arthur L. Allen did and was not represented in

the November 16, 2021 or in the NC-COA #22-276 appeal, and now four months over 120 days and since March 17, 2023 Appellee1, his wife nor his estate responded. FRCP Rule 55, N.C. App. R. 2 and the N.C. Supreme Court judge's inherent power to do so allows for this entry of default. The Appellees have humiliated the Appellant unnecessarily in litigating the 'Will' administration (or lack thereof) and Caveat2. Granting this entry of default does not prejudice the parties except the Appellant in her continued monetary and non-monetary loss to the Wake County Superior Court Caveat2 filed February 13, 2020 and was timely by various reasons—but more than that the Caveat2 was always a small request to divide their mother's N.C. homestead property and GA property equally among the siblings and as 'equal stripes'. This motion will allow doing so, and voids the 2016 'Will' purported by the Appellees. and the siblings can get their mother's 'Will', the Caveats (both the Appellant's and her other sibling's 2017 Caveat), their mother's intentions in the 'Will' and this court matter behind them—thus this entry of default and judgment against Appellee1 from the #22-276 and #84-P23 cases should remand, rescind or reverse this Caveat2 case (#16-E-1390) to Wake County Superior Court as R. 33/R. 38 and/or local Rule 25 deficiencies, and grant the Appellant this entry of default and the default judgment Order. This court has the inherit power to grant this entry of default and is the more fruitful remedy for their mother's 'Will', estate, and her intentions for it and will promo judicial economy and be non-prejudicial to the Appellant's relief sought and her extensive loss at the hands of these Appellees.

Respectfully submitted this the 17th day of July 2023.

s/ Kathy R. Allen (*Pro Se*)
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**APPENDIX D- Decisions of the State Supreme Court Denying
Rehearing**

APPENDIX D

N/A

Appellant Did not File for a
North Carolina Supreme Court *En banc Rehearing* for Case #84P23