

FILED

STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

2015 SEP -1 PM 2: 22

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE No.: 15-CRS-154-155, 164

RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA,

*Plaintiff,*

vs.

BROOKE MCFADDEN COVINGTON,  
SARAH COVINGTON ANDERSON, *and*  
JUSTIN BROCK COVINGTON,

*Defendants.*

SECOND  
MOTION TO DISQUALIFY  
COUNSEL

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney, and moves the Court to enter an Order disqualifying Attorney Angela S. Beeker who now appears as counsel for the above-named defendants upon the following grounds:

*Material Facts*

1. On August 6, 2015, the Court entered an Order disqualifying Mark Morris (State Bar #32846), Josh Farmer (State Bar #32669), Andrea Farmer (State Bar #32668), the law firm of TOMBLIN, FARMER & MORRIS, PLLC (SOSID #0746187), and their associates (hereinafter referred to individually and collectively as "disqualified counsel" or "opposing counsel"), from representing the above-named defendants in these criminal cases. The State incorporates herein by reference this Order of the Court as well as the contents of the official record in each of these causes as if fully set forth herein.
2. Thereafter, disqualified counsel filed several documents in the official record seeking to challenge the Court's disqualification ruling. These documents include the following documents on behalf of each defendant named above: (1) Notice of Appeal; (2) Motion for Reconsideration; and (3) Motion to Stay Proceedings.

3. Attorney Angela S. Beeker signed the documents referenced in the preceding paragraph along with disqualified counsel and, in so doing, entered a formal and unlimited appearance on behalf of the defendants in the trial division.
4. On August 27, 2015, Attorney Beeker appeared on behalf of all of the named defendants at the hearing on the defendants' motions and also in the hearing on the State's written motions in response.
5. Thereafter, on the same day, the Court entered an Order affirming its prior Order of August 6 wherein counsel was disqualified and denied the relief requested by the defendants totally.
6. On August 31, 2015, the undersigned Assistant District Attorney sent a letter by facsimile to Attorney Beeker requesting that she withdraw from this representation. A copy of this letter is attached hereto and incorporated herein by reference as "State's Exhibit 1" as if fully set forth. This letter was intended to provide Attorney Beeker with an opportunity to address the State's concerns without the necessity of bringing a formal motion before the Court as was also done previously with disqualified counsel.
7. Later the same afternoon on August 31, Attorney Beeker replied by letter which was transmitted by facsimile to the Rutherford County District Attorney's Office in which she indicated stated: "I have no plans to withdraw at this time, and I believe that the matter should be taken up with the Court on September 21, 2015 as you suggested." A copy of this letter is attached hereto and incorporated herein by reference as "State's Exhibit 2" as if fully set forth.

*Attorney Beeker has the Same Conflict  
as Disqualified Counsel*

8. This Court disqualified Attorneys Farmer, Morris, their law firm and associates, from representing three defendants in this action because of a concurrent non-waivable conflict of interest. Attorney Beeker now represents the same three defendants and has re-created the exact same situation. Additionally, Attorney Beeker's representation of the defendants overlaps that of disqualified counsel in that she signed the reconsideration and appeal documents along with disqualified counsel.
9. The State's Motion to Disqualify Counsel was not targeted at disqualified counsel individually, but rather at the situation - - that is: the representation

by one Firm of more than one defendant in this action. Thus, the State argues that the same logic applies: if Farmer & Morris and their associates are disqualified, then Attorney Beeker should be as well because the situation *is factually and legally identical*.

*Attorney Beeker's Representation of the Defendants  
is Prohibited under the Plain Language of  
the Court's Order of August 6*

10. The Court's Order of August 6 provides as follows:

“The Law Firm of Tomblin, Farmer & Morris, P.L.L.C., Attorneys Mark Morris, Joshua Farmer, Andrea Farmer **and their associates** are disqualified from representing any of the above named defendants in the matters captioned above.

(Emphasis added).

11. On August 26, 2015, Attorney Joshua Farmer represented to the Court that he and his Firm had “**associated** Ms. Beeker to assist in the Motion for Reconsideration and handle the appeal.” This Court subsequently held that Attorney Beeker had entered a general appearance in the trial division in signing the three documents referenced in paragraph 2 above.
12. The term “associate” “[S]ignifies confederacy or union for a particular purpose, good or ill. To join together, as *e.g.* partners. Partner or colleague. See Association.” *Black's Law Dictionary* 81 (Abridged 6<sup>th</sup> ed. 1991).
13. “Association” is defined as “[T]he act of a number of persons in uniting together for some special purpose or business.” *Id.*
14. The “special purpose or business” advanced here is the reversal of the Court's Order of August 6. The common purpose of disqualified counsel and Attorney Beeker is evidenced by the fact that they all signed the documents seeking to obtain their common objective as referenced in paragraph 2 above. Attorney Beeker is not “independent” counsel, but rather has associated herself with the disqualified lawyers and has, in effect, “stepped into their shoes” and is essentially *acting as counsel for disqualified counsel* in seeking to overturn the Court's Order of August 6.

15. Attorney Beeker is an “associate” of disqualified counsel and is, therefore, disqualified from this representation by the Court’s Order of August 6.

*This Issue has been Decided by the Court  
and the Doctrine of Collateral Estoppel  
Bars Re-litigation of this Issue*

16. “The doctrine of res judicata and the related doctrine of collateral estoppel apply in criminal as well as civil cases.” *State v. Parsons*, 92 N.C. App. 175, 177, 374 S.E.2d 123, 124 (1988); *State v. McKenzie*, 292 N.C. 170, 176, 232 S.E.2d 424, 427 (1977).
17. “Simply said, res judicata precludes the claim or cause of action, collateral estoppel precludes previously litigated issues of fact or law.” *State v. Parsons*, 92 N.C. App. 175, 177, 374 S.E.2d 123, 124 (1988); *Ashe v. Swenson*, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed. 2d 469 (1970); *United States v. Oppenheimer*, 242 U.S. 85, 37 S.Ct. 68, 61 L.Ed. 161 (1916).
18. The *Parsons* Court held:

The North Carolina Supreme Court has set out a test for whether collateral estoppel applies to a specific issue:

- (1) The issues to be concluded must be the same as those involved in the prior action; (2) in the prior action, the issues must have been raised and actually litigated; (3) the issues must have been material and relevant to the disposition of the prior action; and (4) the determination made of those issues in the prior action must have been necessary and essential to the resulting judgment.

*King v. Grindstaff*, 284 N.C. 348, 358, 200 S.E.2d 799, 806 (1973). See *McKenzie* at 176, 232 S.E.2d at 427-28.

*State v. Parsons*, 92 N.C. App. 179, 374 S.E.2d 123, 125 (1988).

19. Applying the *King* test, the State alleges that the issue to be concluded (the representation of the three defendants named herein) is the same as that

previously addressed by this Court in its August 6 Order. In fact, the language in *King* references a “prior action” whereas the Court has entered an Order addressing this issue in this action.

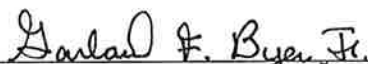
20. Applying element 2 under *King*, this issue was raised and actually litigated not once, but twice.
21. Analyzing element 3 of the *King* test, the issue was material and relevant to the Court’s August 6 Order. In fact, the Court’s August 6 Order addressed the issue exclusively.
22. Finally, as to element 4 of the *King* analysis, the State shows that the determination made of that issue was necessary and essential to the Court’s August 6 Order in that it was the sole issue addressed in said Order.
23. Thus, as the foregoing analysis indicates, the issue of the representation by one attorney of more than one of the named defendants in this cause has been decided and is the law of this case. Retrying this issue is thus barred by the foregoing authorities and principles of law.

WHEREFORE, the State moves that this Court enter an Order disqualifying Attorney Angela S. Beeker, from representing the above-captioned defendants in this cause.

This the 1<sup>st</sup> day of September, 2015.

Respectfully submitted,

FOR THE STATE:

  
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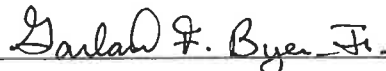
# CERTIFICATE OF SERVICE

This is to certify that I have this day served Angela S. Beeker, Post Office Box 1666, Hendersonville, NC 28793, counsel for Brooke McFadden Covington, Sarah Covington Anderson & Justin Brock Covington, in the foregoing matter with a copy of the attached document by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by Chapter 15A of the North Carolina General Statutes.

This the 1<sup>st</sup> day of September, 2015.

Respectfully submitted,

FOR THE STATE:



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