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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

VIRGINIA:

IN THE SUPREME COURT

COMMONWEALTH OF VIRGINIA,
PETITIONER

Record No. 080282
080283

MOTION FOR SUBSTITUTION

Petitioner, The Commonwealth of Virginia, by counsel, pursuant to Rule 3:7 of the Rules of the Supreme Court of Virginia, moves for a substitution of the respondent on the grounds as follows:

1. On the 7th day of February, 2008, The Commonwealth of Virginia filed an Application for a Writ of Prohibition and an Application for a Writ of Mandamus against the Honorable N. Prentis Smiley, Jr., which was duly served upon him the same day.
2. Thereafter, on the 25th day of December, 2008 the Honorable N. Prentis Smiley, Jr., died.
3. On the 29th day of January, 2009, the Honorable Thomas B. Hoover, Acting Chief Judge for the Ninth Circuit, designated the Honorable William H. Shaw, III as the Judge for the

Circuit Court for York County and the City of Poquoson, until such time as the General Assembly fills the vacancy occasioned by the death of the Honorable N. Prentis Smiley, Jr..

4. This action is not of the type that abates upon the death of the respondent.

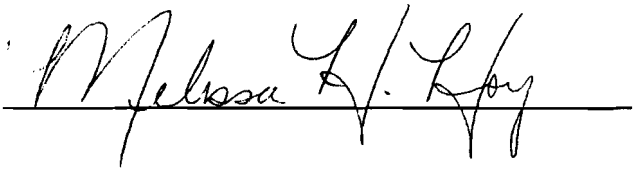
5. A copy of the Amended Application for a Writ of Prohibition and a copy of the Amended Application for a Writ of Mandamus is attached hereto and filed herewith.

WHEREFORE, the petitioner, The Commonwealth of Virginia, moves that the Honorable William H. Shaw, III, Judge for the Circuit Court of York County and the City of Poquoson, be substituted as the respondent herein and that this action then proceed as if this motion were an original petition against the Honorable William H. Shaw, III, as Judge of that Court.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

Petitioner



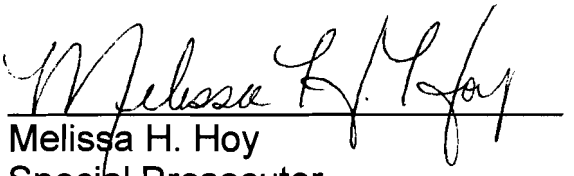
Mark A. Krueger
Special Prosecutor
Deputy Commonwealth's Attorney, Chesterfield County

Melissa H. Hoy
Special Prosecutor
Assistant Commonwealth's Attorney, Chesterfield County

9500 Courthouse Road Extension
P. O. Box 25
Chesterfield, Virginia 23832

CERTIFICATE OF SERVICE

On February 2, 2009, a copy of the foregoing document was served by mail upon the Honorable William H. Shaw III, Judge of the Circuit Court of York County and City of Poquoson, at Gloucester County Circuit Court, 7400 Justice Drive, P.O. Box 576, Gloucester, Virginia 23061, and served by mail upon Joseph A. Migliozzi, Jr., Esquire, Regional Capital Defender, 207 Granby Street, Suite 200, Norfolk, Virginia 23510, counsel for Daryl Atkins, and served by mail on John A. Gibney, Jr., ThompsonMcMullan, P.C. 100 Shockoe Slip, Third Floor, Richmond, Virginia 23219, attorney for the Honorable N. Prentis Smiley, Jr..



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