

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

THE ESTATE OF SARA LYNN COLUCCI,
BY AND THROUGH PERSONAL
REPRESENTATIVE BARBARA MOORE,

Plaintiff,

v.

MICHAEL F.A. COLUCCI,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-08-2672

**DEFFENDANT MICHAEL F.A.
COLUCCI'S MOTION FOR A STAY IN
CIVIL PROCEEDINGS, REMOVAL OF
ADVERSE INFERENCE, AND/OR A
PROTECTIVE ORDER/CONDITIONS**

YOU WILL PLEASE TAKE NOTICE that Defendant, Michael F.A. Colucci ("Defendant"), by and through his undersigned counsel, will move as soon as he may be heard for a stay of this case, or in the alternative, for a protective order or condition pursuant to Rule 26(c), SCRCF preventing any adverse or negative inference from attaching to Mr. Colucci based on his decision to invoke his Fifth Amendment rights in discovery and his deposition in this case. This motion is supported by all applicable authority and may be supplemented with affidavits, memoranda of law or other supporting material as permitted by the South Carolina Rules of Civil Procedure and this Court. The grounds for this motion are as follows.

RELEVANT BACKGROUND

Defendant Michael Colucci (herein "Defendant" or "Mr. Colucci") was indicted for the alleged murder of his wife Sara Lynn Colucci in 2016. The Plaintiff filed this wrongful death action on December 5, 2017 against Mr. Colucci, at a time when his first criminal case was still pending. In December of 2018, the criminal trial resulted in a hung jury and mistrial. After the mistrial, the Attorney General's Office attempted to re-try the criminal case against Mr. Colucci. The re-trial against Mr. Colucci was scheduled to begin in June of 2025, and from 2018 until September of 2025, the

Plaintiff repeatedly consented to postponing their wrongful death case, and even agreed to language in several consent scheduling orders stating: “the parties may petition to amend this scheduling order upon good cause being shown, including any reason related to delays in the criminal matter related to this case.” Consent Scheduling Orders respectively filed January 22, 2019, July 12, 2019, March 13, 2020, October 14, 2020, March 16, 2021, May 6, 2022, August 9, 2023, 2017-CP-08-2672 (emphasis added). Further during this time, Mr. Colucci’s attorney defending him in this wrongful death action moved to be relieved on October 4, 2023 and was officially relieved on November 9, 2023.

Before the second criminal trial against Mr. Colucci commenced in June of 2025, Judge Roger Young dismissed the underlying indictment against Mr. Colucci, finding that the prosecution and law enforcement had not disclosed exculpatory evidence of Mr. Colucci’s wife’s threats of suicide by hanging to the Defense. The dismissal of the indictment was without prejudice, and Young stated that “a fresh restart” was needed, “in order for citizens of South Carolina to have full confidence in whatever the jury’s verdict is.” Judge tosses Michael Colucci’s Indictment Moments Before Opening Statements, Court TV Staff, Courttv.com (posted June 17, 2025): <https://www.courttv.com/news/sc-v-michael-colucci-garden-hose-murder-retrial/>.

On July 25, 2025, Mr. Colucci’s criminal defense attorney Scott Bischoff spoke with Assistant Attorney General Joel Kozak, who led Mr. Bischoff to believe that the Attorney General’s Office was considering presenting another indictment against Mr. Colucci. Since that communication, the Attorney General’s Office has remained silent on any decision, thereby creating a *de facto* delay in the inevitable continuation of this criminal matter via threat of criminal prosecution that persists to this day.

RELEVANT LEGAL STANDARDS

The Fifth Amendment and S.C. Code § 19-11-80

In interpreting the Fifth Amendment, the privilege against self-incrimination has been explained in practical terms as an assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding. The settled law provides that the protection extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual. *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008). The Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution, but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v. Turley*, 414 U. S. 70 (1973). Moreover, the privilege against self-incrimination is also codified in South Carolina pursuant to S.C. Code § 19-11-80, stating "No person shall be required to answer any question tending to incriminate himself." *Id.*

Stay of Proceedings

In South Carolina, a court may "decide in its discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions 'when the interests of justice seem [] to require such action [.]'" *Harbour Town Yacht Club Boat Slip Owners Ass'n v. Safe Berth Management, Inc.*, 411 F.Supp.2d 644 (D.S.C. 2005) (quoting *SEC v. Dresser*, 628 F.2d 1368, 1375 (D.C. Cir. 1980)).

Fifth Amendment and Adverse Inference in Civil Cases

While the law allows adverse inferences against civil litigants who refuse to testify on Fifth Amendment grounds, it does not mandate such inferences. *In re Carp*, 340 F.3d 15, 23 (1st Cir. 2003) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318, (1976)). When all is said and done, the trial court has discretion over whether a negative inference is an appropriate response to the invocation of the Fifth Amendment in a particular civil case. *Id.*

ARGUMENT

I. THE INTERESTS OF JUSTICE REQUIRE A STAY OF PROCEEDINGS IN THIS CASE

This Civil Action is a wrongful death action and involves essentially the same alleged facts, circumstances, actions, evidence, and witnesses as the currently dormant criminal matter, i.e., the highly publicized previous—and possible future—murder prosecution of Mr. Colucci. In fact, the resolution of this Civil Action requires deciding the same essential facts and issues being litigated in the Criminal Case.

Moreover, the criminal matter is not merely a single murder case, but a continuing effort against the Defendant by the Attorney General's Office that has so far lasted approximately 10 years. As of June 2025, in addition to the previous prosecutions, it has now been established that important evidence supporting the contention that the victim committed suicide was withheld in the previous prosecution, and as a result, the Attorney General's office will have an especially heightened interest in a motive to glean new information to present to a grand jury through the potential deposition testimony of Mr. Colucci.

This creates an impossible situation for the Defendant, and weighs heavily in favor of Mr. Colucci's interests in preserving the integrity of the continuing criminal investigations against him the narrow scope of criminal discovery. *See United States v. Any and All Assets of That Certain Business Known as Shane Co.*, 147 F.R.D. 99, 101 (M.D.N.C. 1992) (Court must balance substantial harm to the civil claimant against the moving party's interest in preserving the integrity of his criminal investigation and the narrow scope of criminal discovery). More than just a Hobson's Choice between risking continued criminal re-prosecution by testifying in a deposition, or pleading the Fifth Amendment with an adverse inference attached increasing the likelihood of a substantial monetary judgment in the civil proceedings; both Mr. Colucci's testimony, or lack

thereof by pleading the Fifth Amendment, will further add fuel to the fire for a potential re-indictment. Additionally, discovery conducted in this Civil Action, where discovery is very broad, would inevitably spill over into the Criminal Action, where discovery is narrow and is governed by specific statutory and constitutional rules.

II. IN THE ALTERNATIVE, IT IS NOT REQUIRED NOR APPROPRIATE TO ATTACH A NEGATIVE OR ADVERSE INFERENCE TO DEFENDANT'S INVOCATION OF THE FIFTH AMENDMENT GIVEN THE CIRCUMSTANCES OF THIS CASE

In the alternative and in the event this Motion to Stay Proceedings is denied, it is clear that removing any adverse or negative inference from Mr. Colucci's invocation of the Fifth Amendment is the only just alternative to a stay of these proceedings. This is an unprecedented situation. Mr. Colucci has already stood trial for murder once, and was on the brink of standing trial a second time before his indictment was dismissed without prejudice due to discovery violations in the criminal case. This is also a high-profile case, and there exists heightened public pressure on the Attorney General's Office from certain groups to re-indict Mr. Colucci, at a time when the Attorney General is running for higher political office. Moreover, the assistant Attorney General already communicated to Defendant's criminal defense counsel that his office is considering seeking a new indictment. All of these circumstances put an undue amount of hardship and prejudice on the Defendant if he is forced to invoke his Fifth Amendment rights with an automatic attachment of an adverse inference. Such a situation could—merely due to Mr. Colucci's invocation of his Fifth Amendment right—increase the chances of a Plaintiff's verdict in this Civil Case, which will in turn, apply even more public pressure on the Attorney General's Office to re-indict.

This rises to the requisite showing of a clear case of hardship on the Defendant requiring either a stay of proceedings or stringent protective measures such as the removal of an adverse

inference to ensure that Mr. Colucci is not unfairly prejudiced in this matter.

CONCLUSION

Based on the authority and for the reasons stated above, Defendant Michael F.A. Colucci respectfully requests that his motion for a stay of this Civil Action be granted, or in the alternative, that this Court issue a protective order or condition removing any adverse inference from Mr. Colucci future pleading the Fifth Amendment in his deposition or any written discovery responses in this case.

Respectfully submitted,
JOHN T. GENTRY, III, L.L.C.

s/John T. Gentry, III
John T. Gentry, III, Esq. (S.C. Bar No. 101527)
171 Church Street, Suite 360
Charleston, SC 29401
john@johngentrylaw.com
Counsel for Defendant

January 27, 2026
Charleston, South Carolina