

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

**BRIAN T. POPE,**

*Defendant/Appellant,*

v.

**JEFF HULBERT, et al.,**

*Plaintiffs/Appellees.*

Case No.: 21-1608  
1:18-CV-00461-SAG

**APPELLEES' RESPONSE TO  
SUGGESTION OF DEATH**

**COMES NOW** the Appellees, by and through undersigned counsel, and files this Response to Suggestion of Death, stating as follows:

- 1) On May 20, 2021, Defendant/Appellant Brian T. Pope filed a Notice of Interlocutory Appeal in the United States District Court for the District of Maryland appealing a memorandum and order entered by the trial court on April 22, 2021. *See* ECF 1.
- 2) On May 3, 2021, prior to the filing of the Notice of Interlocutory Appeal, Plaintiff/Appellee Jeff Hulbert passed away.
- 3) On July 2, 2021, Defendant/Appellant Brian T. Pope filed an Amended Suggestion of Death notifying this Court that Plaintiff/Appellee Jeff Hulbert had passed away. *See* ECF 11.

4) After Defendant/Appellant Brian T. Pope filed the Amended Suggestion of Death, this Court issued a Notice to Respond RE: Suggestion of Death, requesting that the parties “provide their views on how this case should proceed in light of the suggestion.” ECF 12.

5) On July 6, 2021, Appellees and Clayton R. Hulbert, as Personal Representative of the Estate of Jeffrey W. Hulbert, Deceased (“**Mr. Clayton Hulbert**”), filed a Motion to Substitute Party. The motion respectfully requests that this Court substitute **Clayton R. Hulbert, as Personal Representative of the Estate of Jeffrey W. Hulbert, Deceased** for **Plaintiff/Appellee Jeff Hulbert** as an appellee in this case. Pursuant to Fed. R. App. P. 43 and Fed. R. Civ. P. 25, the personal representative or any other party may request the substitution of the personal representative for a deceased party within 90 days of the filing of a suggestion of death.

6) As Appellees and Mr. Clayton Hulbert, have timely requested the substitution of Plaintiff/Appellee Jeff Hulbert’s personal representative as a party in this case, as required under the Federal Rules, Appellees and Mr. Clayton Hulbert respectfully request that this Court proceed by granting Appellees’ motion, substituting Mr. Clayton Hulbert as an appellee, and then permitting this case to proceed in the ordinary course without delay.

7) Mr. Clayton Hulbert, as personal representative to Plaintiff/Appellee Jeff Hulbert's estate, has retained undersigned counsel to represent the estate's interests in this litigation. As undersigned counsel has been retained by Appellees and involved in this case since the beginning, this case should proceed without further delay.

8) Appellees and Mr. Clayton Hulbert intend to file a motion to dismiss prior to the parties briefing the merits of this appeal, as this is an appeal arising from an interlocutory appeal denying qualified immunity where the trial judge clearly ruled that outstanding factual issues precluded qualified immunity. *See* Memorandum Opinion, Apr. 22, 2021, ECF 88 at 23 ("factual disputes preclude the Court from determining, at summary judgment, whether Sgt. Pope's orders were lawful or unlawful.").

9) This Court has previously dismissed appeals arising from the denial of qualified immunity where the determination turned on factual rather than legal issues. *See Cooper v. Lippa*, 565 F. App'x 160, 161 (4th Cir. 2014) ("Because the qualified immunity determination in this matter ultimately turns on presently unresolved questions of fact, rather than on an evaluation of the legal significance of facts found by the district court, we do not possess jurisdiction over this appeal. Therefore, we dismiss."); *see also Culosi v. Bullock*, 596 F.3d 195, 203 (4th Cir. 2010) (finding that the court lacked jurisdiction to consider an officer's interlocutory

appeal of the denial of qualified immunity where the trial judge found that plaintiffs had presented sufficient proof of a factual issue).

10) This case was filed in the United States District Court for the District of Maryland on February 14, 2018. This case has been pending for over three years. During that time, one of the plaintiffs has passed away. Appellee's counsel, the undersigned, has represented the Appellees since the very beginning of this case and has been retained by Mr. Clayton Hulbert to continue representing the estate of Plaintiff/Appellee Jeff Hulbert. Accordingly, there is no need for any delay in this case as a result of the substitution of parties, and this Court should permit this case to proceed in the ordinary course without delay.

**WHEREFORE**, Appellees and Mr. Clayton Hulbert respectfully request that this Court proceed by granting Appellees' and Mr. Clayton Hulbert's Motion to Substitute Parties and permit this case to proceed in the ordinary course without delay.

Respectfully submitted,

HANSEL LAW, PC

\_\_\_\_\_/s/ Cary J. Hansel

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*Counsel for Appellees*

*Counsel for Clayton R. Hulbert, as Personal  
Representative of the Estate of Jeffrey W.  
Hulbert, Deceased*

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and contains 712 words, excluding the parts of the motion exempted from the word count by Fed. R. App. P. 32(f). The foregoing motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and (6) and was prepared with proportionately spaced type and typeface of 14-point Times New Roman.

\_\_\_\_\_/s/ Cary J. Hansel

Cary J. Hansel

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 6, 2021, I caused the foregoing to be filed via the Court's electronic filing system, which will make service on all parties entitled to service.

\_\_\_\_\_/s/ Cary J. Hansel\_\_\_\_\_  
Cary J. Hansel