

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE STATE GRAND JURY – RICHLAND COUNTY
Court of General Sessions

The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

MAY 28 2014

Appellate Case No.: 2014-001058
Lower Court Order No.: 2014-GS-47-237

S.C. Supreme Court

Ex Parte: Robert W. Harrell, Jr.,

Respondent,

v.

Attorney General of the
State of South Carolina,

Appellant.

In re: State Grand Jury Investigation.

**RESPONDENT'S REPLY IN SUPPORT OF ITS
MOTION TO RECONSIDER**

Respondent hereby submits this Reply in support of Respondent's Motion to Reconsider the Court's May 22, 2014 Order denying Appellant's Petition for Writ of Supersedeas. Respondent respectfully requests this Court reconsider its Order allowing the Attorney General to proceed with the investigation while the issue of Appellant's conflict of interest remains pending.

In his response to the motion, Appellant argues that the motion to reconsider should be denied for procedural reasons. This argument elevates form over substance. The issue raised in the motion, however is far too important to be foreclosed on procedural grounds, especially

given the short timelines under which the parties are operating. Respondent's motion points out certain consequences of the Court's order of May 22 that the Court may not have considered, and seeks to have the Court revisit the issue of the stay in light of those issues. If the motion as filed is improperly designated, Respondent will re-file it in accordance with any instructions from the Court.

The position of appellant on the merits of the motion is curious, given the posture of this case. In this appeal, Appellant argues that the lower court erred in determining that it did not have jurisdiction over the matter. Appellant certainly never challenged the jurisdiction of the lower court below. Although conceding that the issue is pending in the lower court and that the lower court has jurisdiction to decide it, (Response at 2.), Appellant argues that the conflict of interest issue should be ignored. This essentially is a request that this court deny the motion, which Appellant also admits is not before the Court.

To be clear, Respondent is not asking the Court to decide the issue, only to stay the investigation pending a decision on the issue. If this Court determines that the lower court did not have jurisdiction, then that will be the end of the issue and the lower court order will be in effect. If this Court determines that the lower court did have jurisdiction, however, then the case should remand for a decision by the lower court on the original motion. Given the lower court's decision on jurisdiction, Respondent has no other procedural recourse to have the conflict of interest issue decided. In the existing posture of the case, Appellant is free to continue the investigation without any determination of the motion to disqualify. This in essence converts the lower court's order from a victory for Respondent to a victory for Appellant. Respondent should not be prejudiced in this way, especially when the jurisdictional issue will shortly be reviewed and decided.

Appellant further argues granting the Respondent's Motion "would have the effect of essentially disqualifying the Attorney General." Conversely, the Court's failure to grant Respondent's Motion to Reconsider "essentially would have the effect" of denying Respondent's Motion to disqualify which is patently unfair. All Respondent seeks is a stay of the investigation until the issue of the lower Court's jurisdiction is resolved, and if this Court determines that the lower court does have jurisdiction, until the conflict issue is decided. Appellant has made no showing that a delay of a few weeks would in any way prejudice his investigation. Given that the investigation has been ongoing for fifteen months, of which the Attorney General has been involved himself, for at least the last six (6) months, such a showing would not be possible in any event.

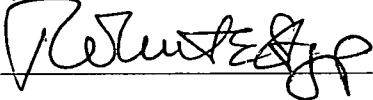
Finally, Appellant argues that post indictment procedures are available to protect Respondent. This is an argument against the motion to disqualify, which Appellant concedes is not before the Court. More importantly, however, the challenge to the investigation involves subject matter jurisdiction and the legitimacy of Appellants' participation. Those issues should be determined before criminal process is initiated, and post-indictment remedies under these circumstances are patently insufficient to protect Respondent from a proceeding that the lower court has already found to be void ab initio.

Allowing the Attorney General to proceed with his investigation will prejudice the Respondent. Because this Court will decide the issue of jurisdiction in the near future, postponing the investigation for a brief time until threshold issues are decided will not prejudice the Attorney General's ability to investigate, and is necessary to protect Respondent Harrell's fundamental rights.

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May 28, 2014

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PROOF OF SERVICE

I certify that I have caused to be served the Respondent's Reply in Support of its Motion to Reconsider by serving as indicated below, on May 28, 2014, addressed to their counsel of record as follows:

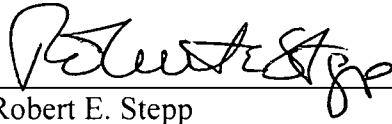
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