

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012 CP 36-00688

Susan D. Summer..... Respondent,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina..... Appellant,

and Applicant for Intervention Russell L. Bauknight, as Personal Representative
of the Estate of James Brown and Trustee of the James Brown 2000
Irrevocable Trust..... Cross-Appellant.

**RESPONDENT'S RETURN TO MOTION FOR LEAVE FOR CIRCUIT COURT
TO CONDUCT PROCEEDINGS AND REQUEST FOR EXPEDITED RULING
AND REMAND**

Respondent Susan D. Summer is a journalist who filed suit in December 2012 against the Attorney General under the Freedom of Information Act, SC Code §30-40-10, et seq., for the release of public documents. By its Order of September 19, 2014, the Circuit Court granted relief to respondent and ordered the production of documents. This Order also directed that the documents be produced within 30 days; that any documents the Attorney General's office considered exempt from FOIA should be listed on a privilege log and such documents produced under seal for court review; and that the Court would hold a hearing within 30 days thereafter to determine whether those documents should be ordered produced as public documents and to consider an award of attorneys' fees and costs. The Order also denied the motion to intervene

by a private party, Russell Bauknight, PR and Trustee of the Estate of James Brown. On September 29, 2014, Russell Bauknight, an applicant for intervention, filed a Notice of Appeal.

On October 15, 2014, the Attorney General produced certain documents pursuant to the lower court Order of September 19, which included a privilege log of numerous documents that appellant considered to be exempt under FOIA. On October 16, 2014, the Attorney General filed his Notice of Appeal.

Meanwhile, the Circuit Court had scheduled a hearing for October 30, 2014 to review the privilege log; the challenges to the documents listed thereon; and to consider ruling on the issue of attorneys' fees.

Before the October 30 hearing, on October 23, 2014, the appellant filed with this Honorable Court its "Motion for Leave for Circuit Court to Conduct Proceedings, for Temporary Stay of Appeal and to Hold Appellate Deadlines in Abeyance." The respondent is informed and believes that the appellant overlooked both that the Circuit Court still has jurisdiction over his case pursuant to Rule 205, SCACR, since the lower court had not ruled on all the issues in the Complaint, as referenced in its September 19 Order, and had not issued a final Order. The appellant further overlooked that Rule 241, SCACR, required him to first go to the lower court if he wanted to seek an order lifting a stay. He did not do so. The appellant takes the position that the filing of Attorney General's Notice of Appeal (which respondent believes were premature) of the September 19 Order operates as a stay of matters in the lower court.

The respondent is informed and believes that this Court should now confirm that no stay exists or that any stay should be lifted because

- (a) the Attorney General consents to the lifting of the stay (and he failed to comply with Rule 241, SCACR, by filing his consent);
- (b) as a result of his filing in this Court, the circuit court declined to proceed with the hearing scheduled for October 30, 2014 until this Court rules; and,
- (c) this Court's Order will clarify that the intervenor/Bauknight's Notice of

Appeal did not stay this FOIA action.

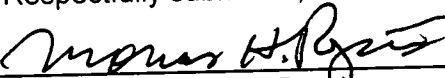
Pursuant to the provisions of Rule 241(D), if there were a stay (which appellant urges, but respondent denies), the appellant's Petition should have been filed initially with the lower court.

Pursuant to the FOIA, this matter deserves the promptest attention as a matter of public interest. This case has been pending for over 22 months. The General Assembly has found, in S.C. Code §30-4-15, that the provisions of FOIA must be construed to insure that citizens have full access to public documents "at a minimum cost or delay." (emphasis added).

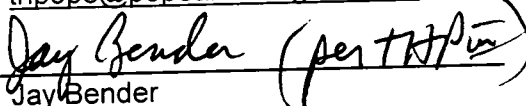
Based on the intent of FOIA, the respondent, a journalist, respectfully requests this Honorable Court grant the following expeditious relief from this Honorable Court by the issuance of an Order:

- (a) Finding that that there is no stay applicable which would prevent the lower court from acting on all FOIA matters in this case;
- (b) In the alternative, if there is a stay, lifting the stay as to the lower court proceeding on the Attorney General's compliance under FOIA as contemplated in the September 19 order of the lower court

Respectfully submitted,

By: 

Thomas H. Pope III, Esquire
POPE AND HUDGENS, P.A.
PO Box 190 - 1508 College Street
Newberry, SC 29108
P: 803-276-2532; F: 803-276-8684
thpope@popeandhudgens.com

By:  (per THP)

Jay Bender
BAKER RAVENEL & BENDER
PO Box 8057
3710 Landmark Drive
Columbia, SC 29202
P: 803-799-9091; F: 803-779-3423
jbender@brblegal.com
Attorneys for Plaintiff Susan D. Summer

November 3, 2014

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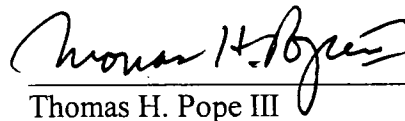
and Applicant for Intervention Russell L. Bauknight, as Personal Representative
of the Estate of James Brown and Trustee of the James Brown 2000
Irrevocable Trust.....Cross-Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served Respondent's Return to Motion for Leave for Circuit Court to Conduct Proceedings and Request for Expedited Ruling and Remand dated November 3, 2014 in the above case on Appellant and Cross-Appellant by electronic transmission and by depositing copy same in the U.S. Mail, postage prepaid, properly addressed to each of the below counsel on 11/3/2014:

J. Emory Smith, Jr., Esquire
Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211
Email: esmith@scag.gov
*Counsel for Appellant Alan Wilson, in
his capacity as Attorney General of SC*

Mark V. Gende, Esquire
Sweeney Wingate & Barrow, PA
PO Box 12129
Columbia, SC 29211
Email: mgv@swblaw.com
*Counsel for Applicant for Intervention
Russell L. Bauknight as PR of the Estate
of James Brown and Trustee of the
James Brown 2000 Irrevocable Trust*


Thomas H. Pope III

November 3, 2014

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

**DOPE
&
HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

November 3, 2014

JOSEPH W. HUDGENS
Of Counsel
THOMAS H. POPE
(1913-1999)

HAND-DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Summer v. Wilson (FOIA case)
Case No. 2012 CP 36-00688

Dear Ms. Kitchings:

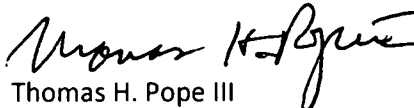
On behalf of the respondent, Susan D. Summer, I enclose herein the original and six (6) copies of Respondent's Return to Motion for Leave for Circuit Court to Conduct Proceedings and Request for Expedited Ruling and Remand, together with my certificate of service of same on counsel of record.

I also enclose another copy of this letter and Return with the request that you please clock same in and return them to me in the enclosed self-addressed, stamped envelope.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope III

THP III/lg

VIA UNITED STATES MAIL AND EMAIL

cc: J. Emory Smith, Esquire, w/encl. (via email)
Jay Bender, Esquire, w/encl. (via email)
Mark Gende, Esquire, w/encl. (via email)

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