

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGM IN A CIVIL CASE

CASE NUMBER: 2012CP4007200

Charles Thomas Brooks III

South Carolina Commission on Indigent Defense

Office of Indigent Defense

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

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RICHLAND COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court.

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ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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INFORMATION FOR THE PUBLIC INDEX

SC Court of Appeals

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 November 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Thomas Brooks III Irma Pringle Brooks G. Murrell Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McBride*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Charles Thomas Brooks, III,)
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Commission on Indigent)
 Defense and Office of Indigent Defense,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION # 2012-CP-40-07200

**ORDER DISQUALIFYING
 IRMA R. BROOKS AND
 CHARLES T. BROOKS, III AS
 ATTORNEYS OF RECORD**

JEANNETTE W. HOBBS
 C.C.P. & G.S.
 2014 NOV -3 AM 10:35
 RICHLAND COUNTY
 FILED

This matter was before the Court pursuant to a Notice of Motion and Motion Disqualify Counsel filed with this Court on August 18, 2014.

The Defendants Move to Disqualify Irma R. Brooks as attorney of record in this matter as well as the Plaintiff, Charles T. Brooks, III, from representing himself in this matter. The Defendants allege that they were necessary witnesses in this matter and could not serve in the role as both advocate and witness pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct. The Plaintiff argued that the disqualification of Irma R. Brooks was not necessary because she was not a material witness. The issues that she was involved in was minimal compared to the overall issues in the case. Furthermore, the Plaintiff argued that the disqualification of Irma R. Brooks and/or Charles T. Brooks, III would create substantial hardship upon the Plaintiff. It would require them to retain the services of an attorney, which would increase their litigation costs.

The Court is guided by Rule 3.7 of the South Carolina Rules of Professional Conduct. This Rule prevents the dual roles of an attorney acting as both an advocate and witness. Rule 3.7 provides in relevant part: a lawyer should not act as an advocate in which the lawyer is likely to be a necessary witness, unless: (1) the testimony relates to uncontested issues; (2) the testimony

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relates to the nature and value of legal services rendered in the same; (3) disqualification of a lawyer would work substantial hardship to the client. 407 S.C.A.C.R., Rules of Professional Conduct 3.7.

Of particular significance is a comment to Rule 3.7, which notes that “the opposing party has a proper objection when the combination of roles may prejudice a party’s rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate witness should be taken as proof or an analysis of proof. Rule 407 S.C.A.C.R. See also; State v. Sanders, 337 S.C. 368, 523 S.E. 2d 187 (Ct. App 1999).

In Collins Entertainment, Inc. v. White, 363 S.C. 546, 611 S.E. 2d 262 (Ct. App. 2005) *reh’g denied* April 21, 2005, *cert. denied* August 15, 2006, the South Carolina Court of Appeals affirmed the trial court’s finding that an attorney could not act as both an attorney and fact witness in the case. Applying Rule 3.7, the Court of Appeals found, “the trial court did not err in requiring [the attorney] to choose whether to act as counsel or to be called as a witness during trial” and reasoned “[t]he roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.” *Id.* At 564, 611 S.E.2d at 271; see also, Lott v. Westinghouse Savannah River Company, Inc., 200 F.R.D. 539, 548-49 (D.S.C. 2000) (quoting Spivey v. United States, 912, F2d 80, 81, (4th Cir. 1990)) (providing “insofar as an affidavit of counsel may attempt to introduce substantive evidence, it is elementary that counsel may not participate both as an advocate and as a witness, absent special circumstances.”)

A United States District Court set forth the rationale for disqualifying an attorney-witness, providing,

If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and this may be a less effective witness. Conversely, the opposing counsel may be handicapped when challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The role of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state

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the facts objectively... When the testimony of the attorney aids his client, a "jury may view an attorney as possessing special knowledge of a case and therefore accord a testifying attorney's arguments undue weight." MacArthur v. Bank of New York, 524 F. Supp. 1205, 1208 (S.D.N.Y. 1981). Additionally, "the adverse party's attorney may... be handicapped in challenging the testimony of another lawyer." Id. Finally, the reputation of the bar as a whole may be diminished because of the speculation as to whether counsel has compromised his integrity on the stand in order to prevail in the litigation." Id.

Clinton Mills, Inc. v. Alexander and Alexander, Inc., 687 Supp. 226, 229 (D.S.C. 1988).

The Plaintiff, Irma R. Brooks, contends that she is not a necessary witness. She further argued that her involvement does not include the issues that are in controversy in this matter. Therefore, the Court could find that the testimony elicited from her could be proffered by other witnesses.

The Defendants argue that Irma R. Brooks was a necessary witness in the prevention of her being called as a witness was prejudicial not only to their defense of the claim but also to their counterclaims. As a result, they listed the following examples of prejudice in Irma R. Brooks being a necessary witness:

1. The South Carolina Supreme Court Opinion reprimanding the Plaintiff specifically noted that the Plaintiff claims that work reported under his name was actually performed by his wife, Irma R. Brooks;
2. There was an Attorney General Investigative Report in which both Irma R. Brooks and the Plaintiff were interviewed. The interview of Irma R. Brooks demonstrates she was doing a fair amount of the Department of Social Services' work in regards to the Indigent Defense cases that were being billed to the Defendants. Although she was performing the work, it was being billed under the Plaintiff's name;

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3. A spreadsheet was provided of fees billed to the Defendants that were performed by Irma R. Brooks. This totaled to \$5,516.00.

From these examples, this Court finds that Irma R. Brooks is clearly a necessary witness in this case. The defenses pled by the Defendants, as well as a Counterclaim would be aided by the testimony of Irma R. Brooks. Therefore, the Court finds that the defense has made a *Prima Facie* showing that she is a necessary witness.

The Court then turns to whether any of the exceptions to Rule 3.7 are applicable. Clearly, this is not an uncontested issue or the testimony of Irma R. Brooks relates to the nature and value of legal services rendered in this case. The only question for the Court to answer is if the disqualification of the lawyer would work substantial hardship on the client. The Plaintiff's attorney argued that disqualification of Irma R. Brooks would create added expenses to the prosecution of their claim. She further argued that she had been involved in this matter and for a new attorney to familiarize themselves with the case facts would result in extensive fees.

This Court notes that Irma R. Brooks did not file a Notice of Appearance in this matter until correspondence dated August 5, 2014. The Defendants filed their Motion on August 18, 2014. This case was originally filed on August 28, 2012.

This Court finds that it would not be a substantial hardship on the Plaintiff to disqualify Irma R. Brooks. First, she has only been involved in this case for approximately two months. Furthermore, the expense of hiring new counsel does not outweigh the prejudice that would occur to the Defendants should they not be allowed to call Irma R. Brooks as witness. Thus, this Court finds that there is not a hardship that would necessitate the Court to allow the Plaintiff to serve in a dual capacity as both an advocate and a witness.

The Court turns next to the issue of the Plaintiff proceeding Pro Se. The Plaintiff is a licensed attorney in the State of South Carolina. To allow the Plaintiff to represent himself as well as be a witness would lead to a conflict with Rule 3.7 of the Rules of Professional Conduct.

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No one argued that the Plaintiff was not a necessary witness in the matter. The question was whether disqualification of the Plaintiff representing himself would work substantial hardship.

The Court finds that there is a unique role when an attorney attempts to proceed Pro Se. A comment on Rule 3.7 states “[P]aragraph (a) (3) recognizes that a balancing is required between the interest of the client and those of the Tribunal and the opposing party. Whether the Tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer’s testimony, and the probability that the lawyer’s testimony will conflict with that of other witnesses.” Based upon the arguments of counsel, the pleadings, the memorandums and exhibits filed by both parties, I find that there may be confusion as to whether statements made by the Pro Se Plaintiff as an advocate witness would be taken as proof as a fact witness or as an analysis of proof as an attorney. This Court finds that those roles inherently conflict with one another when an attorney attempts to represent himself Pro Se.

Accordingly, the effect on the Trial Court and the prejudice to the Defendants with the Plaintiff being both attorney and a witness, far exceeds the hardship on the Plaintiff if he is disqualified from representing himself.

NOW, THEREFORE, based upon the foregoing, it is hereby,

ORDERED, that Irma R. Brooks is hereby disqualified as acting in the capacity as attorney for Plaintiff in this matter. Pursuant to Rule 3.7 of the South Carolina Rules of Professional Counsel. It is further,

ORDERED, that the Plaintiff, Charles T. Brooks, III, is hereby disqualified from representing himself in this matter pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct. It is further,

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ORDERED, that the Plaintiff shall have forty five (45) days from the date of this Order to retain new counsel and shall give written Notice to the Court and to the defense counsel of the name, address and phone number of the new attorney who will prosecute this claim. It is further,

ORDERED, that should the Plaintiff not have new counsel file a formal Notice of Appearance within forty five (45) days of the date of this Order, then the Pro Se Plaintiff shall be allowed to represent himself, but he shall not be allowed to testify as a witness in the Trial unless called by the Defendants. It is further,

ORDERED, that the outstanding discovery Motions and the other pending issues shall be addressed by the new counsel. Therefore, the Motion to Compel filed by the Defendants shall not be rescheduled until forty five (45) days after the date of this Order.

AND IT IS ORDERED:



D. Craig Brown
Presiding Judge of Court of Common Pleas
Fifth Judicial Circuit

At Chambers.
Florence, South Carolina.
October 28, 2014.

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STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)
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Charles Thomas Brooks, III,)
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Plaintiff,)
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vs.)
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South Carolina Commission on Indigent)
Defense and Office of Indigent Defense,)
)
Defendant.)

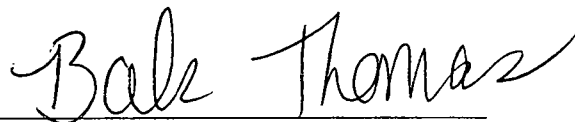
IN THE COURT OF COMMON PLEAS
CIVIL ACTION # 2012-CP-40-07200

CERTIFICATE OF SERVICE

2014 NOV -3 AM 10:36
JEANETTE W. MCBRIDE
RICHLAND COUNTY
FILED
S.C.P. & C.S.

I, the undersigned, an employee of the law firm of Lee, Erter, Wilson, Holler & Smith, L.L.C., do hereby certify that I have this 31st day of October, 2014 served the foregoing Order Staying Action as to Trial Only and Order Disqualifying Irma R. Brooks and Charles T. Brooks, III as Attorneys of Record via electronic mail, and U.S. Mail with proper postage to the following address:

Irma R. Brooks, Esquire
Charles T. Brooks, Esquire
309 Broad Street
Sumter, SC 29150
brooksirbrooks@aol.com



Babs Thomas
Paralegal to G. Murrell Smith, Jr.
Lee, Erter, Wilson, Holler & Smith, L.L.C.
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(803) 778-2471

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SC Court of Appeals

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