

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Commons Pleas
Honorable D. Craig Brown, Circuit Court Judge

Case No: 2012-CP-40-07200

114354
RECEIVED

DEC 03 2014

SC Court of Appeals

Charles Thomas Brooks, III,

Plaintiff,

v.

South Carolina Commission on Indigent Defense and
Office of Indigent Defense,

Defendants.

MOTION TO DISMISS

This Motion is filed pursuant to Rule 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. This is an Appeal from an Order Staying Action as to Trial Only. The Court should dismiss this Appeal because such an Order is not immediately appealable.

The Plaintiff started this lawsuit by filing a Summons and Complaint on August 28, 2012. (Attachment A)

Defendants filed a Motion to Stay this Action Pending Ruling by the Supreme Court on Issue in its Original Jurisdiction dated June 27, 2014. (Attachment B)

The Court conducted a hearing concerning this Motion (and other Motions) on October 9, 2014. The Court granted the Motion Staying the Action in an Order that was signed on October 28, 2014 and filed on November 3, 2014. (Attachment C)

The Appellant did not file a Motion to Reconsider the Court's Order. The Appellant did serve and file a timely Notice of Appeal.

ARGUMENT

The issue that the parties argued to the Circuit Court was whether it was appropriate to stay the action pending resolution of the issues that are currently pending before the South Carolina Supreme Court in its Original Jurisdiction. The Circuit Court held that this matter should be stayed from trial only and discovery should continue while the matter is stayed from trial pending resolution of the matters before the South Carolina Supreme Court.

This Order is not immediately appealable. Pursuant to Edwards v. SUNCOM, 369 S.C. 91, 631 S.E.2d 529 (2006) a Motion Staying the Action is not immediately appealable pursuant to S.C. Code Ann. §14-3-330.

The reason for this holding is the right to appeal is governed by statute. For an Order to be immediately appealable, the relevant statute requires the Order to be a final judgment, to involve the merits, to affect a substantial right (in one (1) of three (3) ways), or to deal with an injunction or a receiver. See S.C. Code Ann. §14-3-330. The Order that stays an action does not meet any of these categories pursuant to the holding in Edwards v. SUNCOM, 369 S.C. 91, 631 S.E.2d 529 (2006) thus, this Order is not immediately appealable.

First, such an Order is (obviously) not a final judgment. A final judgment determines all of the issues between the parties and leaves nothing to be done but to enforce an Order by execution. Link v. Sch. Dist. of Pickens County, 302 S.C.1, 5n.3, 393 S.E.2d 176, 178n.3

(1990). Denying a Motion to Stay the Action is not the end of the road. There will not be a final judgment until after the parties have participated in an eventual trial that will be conducted after the matters pending before the Supreme Court in its Original Jurisdiction.

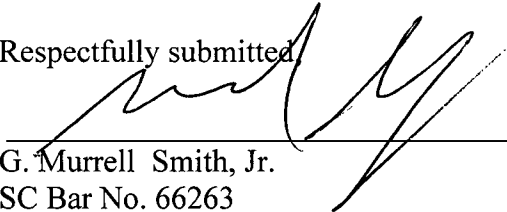
Second, such an Order does not involve the merits. This is because a Judge that denies a motion under these rules in not expressing any opinion on the merits. See Jefferson, 295, S.C. 317, 368 S.E.2d at 456. The question of whether to stay an action does not involve examining the substance of a Defendant's case. Instead, staying an action deals with the trial date and does not have any impact upon the merits of the case.

Finally, Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense. An Order staying an action does not affect any of the rights as listed above.

CONCLUSION

This Court should dismiss this Appeal. Controlling precedent established that this ruling, the granting of a Motion to Stay Action, is not immediately appealable.

Respectfully submitted,



G. Murrell Smith, Jr.
SC Bar No. 66263
LEE, ERTER, WILSON, HOLLER & SMITH, L.L.C.
126 N. MAIN STREET/POST OFFICE BOX 580
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December 1, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 03 2014

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Commons Pleas

Honorable D. Craig Brown, Circuit Court Judge

Case No: 2012-CP-40-07200

Charles Thomas Brooks, III,

Plaintiff,

v.

South Carolina Commission on Indigent Defense and
Office of Indigent Defense,

Defendants.

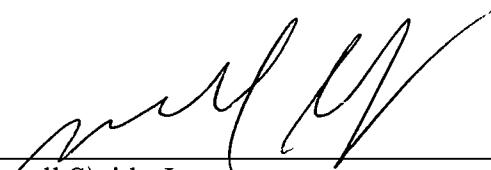
PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 1st day of December, 2014, I served the foregoing Motion to Dismiss the Appeal as to the Order Staying Action as to Trial Only, as well as the Proof of Service in this matter by depositing a true copy of the same in the United States Mail, postage prepaid, addressed to the following:

The Honorable D. Craig Brown
180 N. Irby Street
Florence, South Carolina 29501

Irma R. Brooks
The Brooks Law Office, LLC
309 Broad Street
Sumter, South Carolina 29150

The South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211



G. Murrell Smith, Jr.
SC Bar Number: 66263
Attorney for Defendant/Respondent
Lee, Erter, Wilson, Holler & Smith, LLC
126 N. Main Street/Post Office Box 580
Sumter, South Carolina 29151
(803) 778-2471

December 1, 2014

ATTACHMENT A

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED

2012 AUG 28 AM 11:47

Charles Thomas Brooks III

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.


vs.

SUMMONS
(Non-jury)

South Carolina Commission on)
Indigent Defense; and)
Office of Indigent Defense)
Defendant)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint in a timely manner as set forth herein and by the applicable rules, judgment by default may be entered against you for the relief demanded in the complaint.


Desa Ballard
Harvey Watson
Ballard Watson Weissenstein
226 State Street
West Columbia, South Carolina 29169
Telephone: 803.796.9299
Facsimile: 803.796.1066
E-mail: desab@desaballard.com
E-mail: stephanie@desaballard.com

August, 27 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
RECORDED

COUNTY OF SUMTER

2012 AUG 28 AM 11:47

Charles Thomas Brooks III

JAMES CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

vs.

COMPLAINT
(Non-jury)

South Carolina Commission on)
Indigent Defense; and)
Office of Indigent Defense)
Defendant)

The Plaintiff, complaining of the Defendant, would show until this Honorable Court:

1. Plaintiff is a citizen of the State of South Carolina, is licensed to practice law in this State and does so, throughout the State of South Carolina, with his primary place of business located in Sumter County.
2. The Defendant South Carolina Commission on Indigent Defense (hereinafter "Commission" or "SCCID") is a state agency created by the General Assembly, which has as its obligation, *inter alia*, the duty to pay private attorneys who are appointed to represent indigent defendants through the Defense of Indigents Act, S.C.Code Ann. § 17-3-5 (Supp. 2012).
3. On information and belief, the Commission carries on its duties throughout the State of South Carolina.
4. Defendant Office of Indigent Defense (hereafter "OID") is an administrative agency created by the General Assembly to carry out the ministerial functions entrusted to the Commission, including the processing and payment of vouchers by private attorneys by distributing funds appropriated by the General Assembly for that purpose. On information and belief, OID carries out its duties on behalf of the Commission throughout the State of South Carolina.

5. This Court has jurisdiction and venue for purpose of this action.

FIRST CAUSE OF ACTION

Declaratory Judgment Action and Request for Injunctive Relief

6. Each and every allegation set forth above is incorporated herein where relevant as if repeated herein verbatim.
7. The first cause of action is a declaratory judgment action brought pursuant to S.C.Code Ann. § 15-53-10 *et seq.*, to declare the rights of the parties as to the dispute set forth herein.
8. Pursuant to its statutory authority, the Commission has enacted rules, policies, procedures, regulations and standards it considered necessary to fulfill in accordance with § 17-3-310 (G)(2).
9. On information and belief, the rules, policies, procedures, regulations, and standards enacted by the Commission are used by OID and private attorneys to regulate the submission and payment of vouchers for services provided to indigents by private attorneys.
10. Plaintiff has regularly served as appointed counsel or substituted appointed counsel on cases where the client is indigent and eligible for representation under the Defense of Indigents Act.
11. Plaintiff has submitted vouchers for payment under the rules, policies, procedures, regulations and standards enacted by the Commission in connection with his representation of indigent defendants and been paid for his services in accordance with the statutory mandates of the Defense of Indigents Act.
12. When, on occasion, there has been a question about a particular entry on a particular voucher, officers and/or agents of the Defendants have contacted Plaintiff through

Plaintiff's staff and requested clarifying information, which has usually been resolved with a simple phone call.

13. The rules, policies, procedures, regulations, and standards enacted by the Commission provide a procedural mechanism by which OID is required to resolve disputes on individual vouchers by submitting the dispute to the "trial court" and such disputes are resolved by the trial court.
14. In or about October 1, 2009, without notice to Plaintiff or to the trial court, T. Patton Adams IV, acting in his capacity as Executive Director of the Commission, filed a complaint against Plaintiff with the Office of Disciplinary Counsel alleging that OID had failed to properly do its job and overpaid Plaintiff on certain vouchers during a period from October, 2006 through September, 2009.
15. None of the specific instances of alleged disputed payments had ever been brought to the attention of the Plaintiff or the trial court as required by the rules, policies, procedures, regulations, and standards enacted by the Commission.
16. In response to the Complaint, Plaintiff attempted to communicate with the Commission and OID in an effort to identify the particular charges in dispute, but the Commission and OID refused to cooperate with Plaintiff and advised Plaintiff's counsel that they wanted Plaintiff disbarred.
17. On information and belief, Defendants also failed to cooperate with the Office of Disciplinary Counsel in its efforts to determine what particular charges were in dispute so that Plaintiff could attempt to resolve the problem.
18. On or about December 9, 2009, Plaintiff, through counsel, asked the Commission and OID to cease payment on vouchers that would continue to be submitted while a

determination could be made whether any errors had been included on the prior vouchers about which Defendants were complaining. Plaintiff suggested an offset against fees that would become due to him for additional work her performed pursuant to the Defense of Indigents Act for such amount as was determined to have been questionable, but not brought to Plaintiff's attention prior to payment by OID.

19. Defendants did not respond. However, Defendants continued to receive vouchers submitted by Plaintiff and continue at this time to receive vouchers submitted by Plaintiff as and when cases conclude for which Plaintiff is owed compensation as counsel for indigents. None of the vouchers submitted previously by Plaintiff, or that continue to be submitted as they are completed by Plaintiff, are being processed or paid.
20. Without the assistance of the Defendants, Plaintiff obtained an independent review of vouchers that appeared to be in question, and submitted that independent accounting to the Office of Disciplinary Counsel.
21. Plaintiff determined that at most, the amount for which he had been overpaid by SCCID (even though SCCID had not questioned any of the vouchers at the time they had been submitted) was \$61,826.40.
22. Plaintiff and the Office of Disciplinary Counsel entered into an agreement for discipline by consent, which was submitted to the Commission on Lawyer Conduct, who accepted the proposed agreement and recommended it for approval and adoption by the Supreme Court of South Carolina.
23. The Supreme Court of South Carolina approved the agreement to discipline by consent, confirmed the definite offset number as \$61,826.50, and instructed Plaintiff

to "make restitution to the [SCCID] for the excess compensation he received by asking it to reduce the fees it currently owes to him by \$61,826.40 and entering into a repayment plan if the amount owed to him is insufficient to satisfy his debt to [SCCID]." *In the Matter of Brooks*, Op.No. 27151 (August 1, 2012).

24. On or about August 27, 2012, Defendants submitted documentation to Plaintiff indicating it had vouchers filed by him for fees and costs that he had already incurred and submitted, which had been "Pre-Approved by Database" but had not yet been paid to Plaintiff in the amount of either \$115,332.50 or \$126,081.00.
25. On the same date, Plaintiff submitted his own calculation of vouchers due him, which totaled \$110,522.85.
26. In a meeting on that date, Plaintiff requested disbursement to him of the difference between his demand sum of \$110,522.85 (which excluded one case which Defendants claimed was disputed), less the adjudicated amount of offset of \$61,826.40, for an amount net due to Plaintiff of \$48,696.45.
27. Defendants refused to pay any funds to Plaintiff, despite the adjudication by the Supreme Court of South Carolina of the precise amount of the offset against funds owed to Plaintiff.
28. Plaintiff seeks a declaration from this Court that Defendants are required to pay to him, through this date, the sum of \$48,696.45 for pending vouchers which have been "pre-approved" by the SCCID database, which reflects the difference between vouchers "pre-approved" by the SCCID database, less the precise offset ordered by the Supreme Court.

29. Plaintiffs also request injunctive relief, *pendent lite* and permanently, that prohibits Defendants from continuing to refuse to pay funds that are due to Plaintiff, or in the alternative, that requires Defendants to comply with the rules, policies, procedures, regulations and standards enacted by the Commission for determining disputes on individual vouchers.

FOR A SECOND CAUSE OF ACTION
Conversion – Bad Faith

30. Each and every allegation set forth above is incorporated herein where relevant as if repeated herein verbatim.
31. Defendants, by and through its agents Hugh Ryan, T. Patton Adams, and perhaps others, have converted to the possession of the Defendants funds that are due and payable to Plaintiff, as set forth above.
32. Plaintiff has made due demand for said funds, which demands have been refused.
33. Defendants are liable to Plaintiff for conversion of funds in the amount of \$48,696.45, in that Plaintiff has an interest in those funds by virtue of his compliance with the rules and regulations for submission of vouchers under the Defense of Indigents Act, the Defendants have held those funds for their own use or the use of payment to others, and the withholding of funds was without Plaintiff's permission.
34. On information and belief, the individual agents of the Defendants are acting within the scope of their employment by the Defendant agencies in their acts and omissions as set forth herein.
35. On information and belief, the individual agents of the Defendants are acting in bad faith and for an improper purpose in that they attempted to have Plaintiff disbarred

and were unsuccessful in doing so, and have been willing to violate their own internal policies and procedures for the processing of vouchers submitted by Plaintiff.

36. On information and belief, the individual agents of the Defendants are asserting false and frivolous rationale for their refusal to pay funds to Plaintiff to which he is lawfully entitled, and are further subjecting Plaintiff's vouchers to undefined rules and unwarranted scrutiny.

37. The Defendant agencies of the State are liable for the torts of their employees in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations set forth in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* (hereafter "the Act").

38. On information and belief, no limitations set forth the Act exempt the Defendant agencies for the wrongful, willful and intentional conduct set forth above which constitutes, at a minimum, gross negligence.

39. Plaintiff has incurred attorney fees, lost income, lost interest income, emotional distress, damage to his reputation, and other actual and consequential damages as a direct and proximate result of the wrongful conduct set forth herein.

40. As a direct and proximate result of the acts and omissions of the agents and officers of the Defendant agencies, the Defendant agencies are liable to the Plaintiff for actual damages in an amount to be determined by the trier of fact.

DEMAND FOR ATTORNEYS FEES AND COSTS
S.C. Code Ann. Section 15-77-300

41. Each and every allegation set forth above is incorporated herein where relevant as if repeated herein verbatim.

42. Plaintiff has incurred, and is continuing to incur, attorney's fees and costs in connection with this request for payment of funds to which he is entitled, as set forth above, and which Defendant agencies have willfully and wrongfully refused to pay.

43. Plaintiff has been required to bring this action to contest state action as a result of the acts and omissions of the Defendant agencies as set forth herein, and is entitled to recover attorney's fees and costs because the Defendant agencies acted without substantial justification in refusing to comply with its obligations to Plaintiff under the Defense of Indigents Act.

44. As a direct and proximate result of the acts and omission of the Agency defendants as set forth herein, Plaintiff is also entitled to an award of his reasonable attorney fees and costs incurred in connection with this action.

WHEREFORE, having fully set forth the grounds for his demands for relief set forth herein, Plaintiff prays for an order of this Court:

- A. Declaring the rights of the parties as set forth herein in the First Cause of Action;
- B. Issuing an injunction as prayed for in the First of Cause of Action;
- C. For actual damages in an amount to be determined by the trier of fact in the Second Cause of Action;
- D. For an award of attorney fees and costs incurred in connection with Plaintiff's contesting of the acts and omissions of the Defendant agencies, including the filing and prosecution of this action; and
- E. For such other and further relief as the Court deems just and proper.

Desa Ballard

**Desa Ballard
Harvey M. Watson III**

Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
harvey@desaballard.com

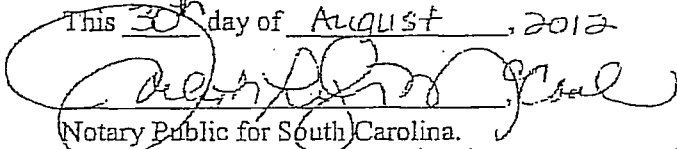
ATTORNEYS FOR PLAINTIFF

August 27 2012

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SUMTER)	Case No. 2012-CP-43-1691
)	
Charles Thomas Brooks III)	
)	
)	VERIFICATION
vs.)	
)	
South Carolina Commission on)	
Indigent Defense; and)	
Office of Indigent Defense)	
)	
<u>Defendant</u>)	


I, Charles Thomas Brooks, III, have read and verified the Motion for Emergency Injunction and it is, therefore, complete and accurate to the best of my knowledge and belief.

SWORN to and Subscribed before me,
 This 30 day of August, 2012



Notary Public for South Carolina.

My Commission expires: 4/2/2020


 Charles Thomas Brooks III

ATTACHMENT B

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

**NOTICE OF MOTION AND MOTION
TO STAY ACTION PENDING RULING BY
SUPREME COURT ON ISSUE IN ITS
ORIGINAL JURISDICTION**

TO: CHARLES T. BROOKS, III, ESQUIRE, PRO SE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney will move before the Presiding Judge of the Fifth Judicial Circuit on July 7, 2014 or soon thereafter as this matter may be conveniently heard for an Order Staying this Action pending a Ruling by the South Carolina Supreme Court on a question that it has in its Original Jurisdiction involving the matters in dispute in this litigation. The basis of this Motion is that the Plaintiff has filed a Complaint to which the Defendants have Counterclaimed concerning monies claimed to be owed for Rule 608 Appointments accepted by the Plaintiff from other attorneys. This matter revolves around a key issue as to whether fees paid by other attorneys to the Plaintiff for acceptance of Rule 608 Appointments are to be disclosed to your Defendants and deducted from the reimbursement provided to the Plaintiff for assumption of these Rule 608 Appointments.

Your Defendants filed an action in the Supreme Court to which the Supreme Court accepted this matter in its Original Jurisdiction to answer the very limited question as to whether payments made by an attorney appointed to represent indigent clients to substitute counsel are payments received "on Defendants' behalf" wherein such payments must be disclosed and accounted for on vouchers submitted to your Defendants for payment.

2014 JUN 27 AM 10:10
RICHLAND COUNTY
CLERK OF COURT
C.C.P. & O.S.

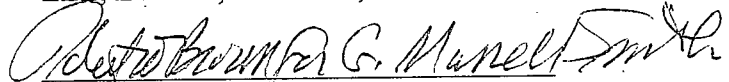
By Order of October 2, 2013, the South Carolina Supreme Court appointed the Honorable Clifton Newman as Special Referee to assist the Court and make further factual findings. This matter is still pending before Judge Newman for the Supreme Court to make its Ruling.

Therefore, your Defendants believe that this Court should not proceed in this action as the Supreme Court issues its Ruling on the issue it has before it on Original Jurisdiction. Otherwise, the Court of Common Pleas and the Supreme Court could reach different results and have duplicative proceedings.

Your Defendants are informed and believe that this Court should Stay this Action pending the resolution from the Supreme Court. Once the Supreme Court answers the question, then it will make this litigation more easy to either resolve and/or try.

Respectfully Submitted:

LEE, ERTER, WILSON, HOLLER & SMITH, LLC



G. Murrell Smith, Jr.

Lee, Erter, Wilson, Holler & Smith, L.L.C.

Attorneys at Law

126 N. Main Street

Sumter, South Carolina 29150

(803) 778-2471

June 25, 2014.

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.)

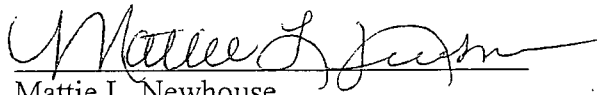
IN THE COURT OF COMMON PLEAS
CIVIL ACTION # 2012-CP-40-07200

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2014 JUN 27 AM 10:10
JACQUETTE V. HODGINS
C.D.P. & G.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 27th day of June, 2014 served the foregoing NOTICE OF MOTION AND MOTION TO STAY ACTION PENDING RULING BY SUPREME COURT ON ISSUE IN ITS ORIGINAL JURISDICTION by personally depositing the same in the U.S. Postal Service, with proper postage affixed, to the following addresses:

Charles T. Brooks, III, Esquire
Irma Brooks, Esquire
309 Broad Street
Sumter, SC 29150


Mattie L. Newhouse
Paralegal to G. Murrell Smith, Jr.
Lee, Erter, Wilson, Holler & Smith, L.L.C.
Attorneys at Law
126 N. Main Street
Sumter, South Carolina 29150
(803) 778-2471

ATTACHMENT C

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007200

Charles Thomas Brooks III

South Carolina Commission on Indigent Defense

Office of Indigent Defense

PLAINTIFF(S)

DEFENDANT(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 _____

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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

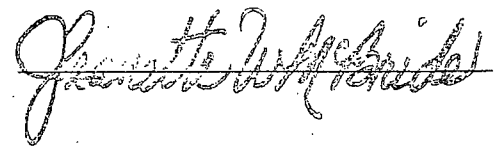
G. Murrell Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court



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. HODGINS
 C.C.P. & C.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

Pcb
10/6
SCANNED

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)
)
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

CERTIFICATE OF SERVICE

2014 NOV -3 AM 10:36
JEANNETTE W. MCBRIDE
RICHLAND COUNTY
FILED
D.C.P. 2 G.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

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DEC 03 2014
SC Court of Appeals

Babs Thomas

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‡ Certified Circuit Court Mediator

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December 1, 2014

Email Address: murrellsmith@leeandmoise.com

South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211

IN RE: Charles Thomas Brooks, III v. South Carolina Commission on Indigent Defense
and Office of Indigent Defense
Case Number: 2012-CP-40-07200

Dear Ms. Kitchings:

Enclosed herewith please find a Notice of Motion and Motion to Dismiss the Appeal from the Order Staying Action as to Trial Only in regards to the above referenced matter as well as a Proof of Service of the same. I enclose herewith the appropriate filing fee in regards to this Motion.

If you have any questions, please feel free to contact me.

With kindest regards, I am

Sincerely,



G. MURRELL SMITH, JR.

GMSjr:bt

Enclosures

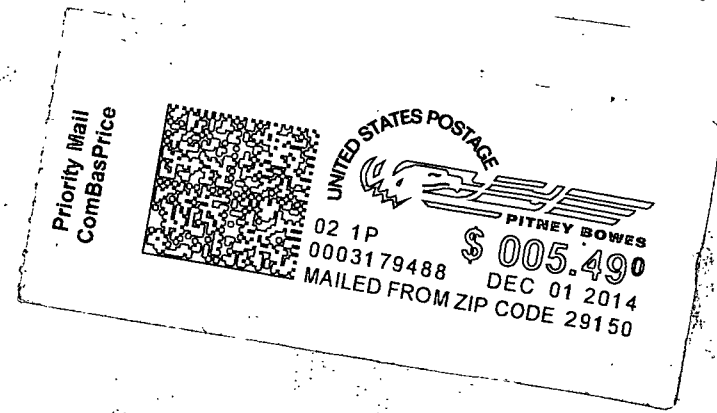
cc: The Honorable D. Craig Brown
Irma Brooks, Esq.
Charles Brooks, Esq.
Hugh Ryan, Esq.
Patton Adams
Barry Rice, IRF # 87989

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SC Court of Appeals

Lee, Erter, Wilson, Holler & Smith, LLC
P.O. Box 580
Sumter, South Carolina, 29151



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SC Court of Appeals

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