

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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

Case No: 2012-CP-40-07200

RECEIVED
DEC 23 2014
SC Court of Appeals

Charles Thomas Brooks, III,

Appellant,

v.

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

Respondents.

MEMORANDUM REGARDING APPEALABILITY

This matter is before this honorable court regarding instructions to submit a memorandum concerning the appealability of an ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD and an ORDER STAYING ACTIONS AS TO TRIAL ONLY.

QUESTIONS PRESENTED

(1) Is the ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD immediately appealable?

(2) Is the ORDER STAYING ACTION AS TO TRIAL ONLY immediately appealable?

SHORT ANSWER

(1) The ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD is immediately appealable because it involves the substantial right of denial of counsel of choice and the denial of the right to represent oneself.

(2) The ORDER STAYING ACTION AS TO TRIAL ONLY is immediately appealable because it involves the substantial right of procedural due process, and the substantial right to litigate a property right.

PROCEDURAL HISTORY

The underlying lawsuit was filed in August 2012 by the Appellant/Plaintiff seeking payment from the Respondents/Defendants for unpaid vouchers for legal representation of indigent clients. The Appellant/Plaintiff was initially represented by Attorney Desa Ballard. By consent of the Appellant/Plaintiff, Attorney Ballard was relieved from the case and discontinued her representation on or around February 2013. Between February 2013 and September 2013, the Appellant/Plaintiff did submit one letter to counsel for the Respondents/Defendants attempting to negotiate a settlement.

On or around late September 2013, the parties unsuccessfully attempted to mediate the

case. Thereafter, the Appellant/Plaintiff was without legal counsel on the case. During this period of time, no substantive action occurred on the case due to the unavailability of counsel for the Respondents/Defendants. At the most, between September 2013 and August 2014, the Appellant/Plaintiff exchanged letters with counsel for the Respondents/Defendants concerning payment issues related to vouchers for legal services rendered to indigent clients outside of the time period of this lawsuit.

On or around August of 2014, Attorney Irma Brooks filed a formal Notice of Appearance on behalf of the Appellant/Plaintiff as his attorney of record. During this time, Attorney Irma Brooks also raised a concern with the attorney for the Respondents/Defendants about failure to receive notice of counsel's unavailability for a scheduled, mandatory docket hearing in the case. Shortly thereafter, the Respondents/Defendants filed a MOTION TO DISQUALIFY IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD and a MOTION TO STAY ACTION AS TO TRIAL ONLY.

A hearing was held by the Honorable Brown regarding the above motions. Judge Brown ruled that both Irma R. Brooks and Charles T. Brooks, III, were disqualified as legal counsel in the case and that the Appellant/Plaintiff would have to retain new counsel. Judge Brown also ruled the action would be stayed as to trial pending resolution of the Supreme Court action. This appeal follows.

Regarding the Supreme Court action referenced above, the Respondents/Defendants filed an action in the South Carolina Supreme Court on January 28, 2013, petitioning the Court in its original jurisdiction to decide whether payments made to a Rule 608 substitute attorney amount to payments made "on the defendant's behalf" as to require disclosure for purposes of payments made by the Office of Indigent Defense for legal representation of indigent clients. Attorney Irma

Brooks represents the Appellant/Plaintiff in this action. The Supreme Court granted the petition. The Supreme Court also appointed the Honorable Clifton Newman as Special Referee in the matter to develop the facts of the case. The case is highly contested among the parties mainly centering on whether the payment policy existed prior to November 2012, or was amended in reaction to the lawsuit filed in the trial court below by Appellant/Plaintiff seeking payment for legal services rendered to indigent clients as a result of Rule 608 appointments. The Supreme Court matter is in the early stages of litigation and is in a pre-trial discovery stage.

BRIEF FACTUAL BACKGROUND

This case was filed in August 2012 by the Plaintiff seeking payment from the Defendants for unpaid vouchers for legal representation of indigent clients. The Plaintiff was investigated by the Office of Disciplinary Counsel for improper billing practices regarding Plaintiff's practice of representing indigent clients through the Rule 608 appointment system. The Defendants referred the case to the Office of Disciplinary Counsel and participated in the investigation of the matter. The investigation resulted in the Plaintiff receiving a public reprimand for improper billing and accounting practices. The public reprimand required the Plaintiff to implement a new billing system and reimbursement the Defendants for any overbilling for Rule 608 appointments.

A forensic accounting was used to determine the amount of overpayment and offset required to be reimbursed to the Defendants. The adjudicated amount of the offset to be reimbursed to the Defendants as a result of the public reprimand is \$61,826.40. The adjudicated offset covers the time period of 2006 through August of 2009. In the pleadings to the lawsuit, the Plaintiff demanded the difference between all pending and unpaid vouchers submitted for the representation of indigent clients [\$110,522.85], less the adjudicated amount of the offset

[\$61,826.40], for a demand of \$48,696.45. Taking into account all vouchers submitted and unpaid through September 2009 through August 2012, appropriate time frame of this lawsuit, the Plaintiff is informed and believes the demand is currently \$57,978.00. The Plaintiff has sought the demand of payment for legal fees for the representation of indigent clients through Rule 608 appointments and the Defendants have refused payment.

The Defendants now seek to challenge the amount of the offset adjudicated in the public reprimand by re-litigating this issue in the lawsuit in the trial court below.

DISCUSSION

I. The ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD is immediately appealable.

(A) Disqualification as to Attorney Irma R. Brooks

The Respondents/Defendants moved to disqualify Attorney Irma R. Brooks from being able to represent the Appellant/Plaintiff in this matter because of allegations that she is a necessary witness as to billing practices in the Appellant's/Plaintiff's law firm involving vouchers submitted for the representation of indigent clients pursuant to Rule 608 cases. The question now before this honorable court is whether the granting of that motion and the subsequent Order is immediately appealable.

The Respondents/Defendants rely on one case in which Attorney Irma R. Brooks represented a parent in a termination of parent rights action and prevailed on appeal as creating the factual background for being a necessary witness. Attorney Irma R. Brooks properly sought an Order from the Family Court approving the fees in the case. The Respondents/Defendants have

not challenged the Fee Order in court and the case was completed close to or more than five (5) years ago. The Respondents/Defendants allege that one case by Attorney Irma R. Brooks is critical to the testimony of the other 169 vouchers pending in the lawsuit below that the rules prevent involvement as both witness and advocate for the Appellant/Plaintiff.

The Order granting disqualification as to Attorney Irma R. Brooks is immediately appealable based on the law established in *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), holding that “an order granting a motion to disqualify a party’s attorney in a civil case affects a substantial right and may be immediately appealed under Section 14-3-330(2).” Further, *Hagood* provides that an order must be immediately appealed regarding the disqualification of a party’s attorney or any later objection is waived. *Id.*

While the Respondents/Defendants rely on Rule 3.7 of the Rules of Professional Conduct to broadly assert that an attorney cannot serve as advocate and witness, they disregard Rule 3.7(b) which provides that a lawyer may testify as a witness in a case handled by a lawyer from the same firm, provided there are no conflicts of interest with clients or former clients.

Therefore, Attorney Irma R. Brooks, according to the complete provisions of Rule 3.7, could function as attorney of choice for the Appellant/Plaintiff and advocate of the same. In addition, the lawsuit pending in the lower court here would be in front of a judge and not a jury, thereby eliminating any confusion issues as to legal counsel as witness and advocate.

In *Hagood*, when the court concluded the right to retain counsel of one’s choosing is a substantial right for the purposes of appealability, the court noted the following:

- (1) “the importance of the party’s right to counsel of his choice in an adversarial system;
- (2) the importance of the attorney-client relationship, which demands a

confidential, trusting relationship that often develops over time;

(3) the unfairness in requiring a party to pay another attorney to become familiar with a case and repeat preparatory actions already completed by the preferred attorney; and

(4) an appeal after final judgment would not adequately protect a party's interest because it would be difficult or impossible for a litigant or an appellate court to ascertain whether prejudice resulted from the lack of a preferred attorney." *Id.* at 197, 607 S.E.2d at 710.

For all of the foregoing reasons concluded in *Hagood*, the Order Disqualifying Irma R. Brooks as counsel of choice for the Appellant/Plaintiff is immediately appealable.

(B) Disqualification as to Attorney Charles T. Brooks, III

All of the foregoing discussion and argument as to the disqualification of Attorney Irma R. Brooks is repeated as if recited verbatim herein.

If this honorable court affirms the disqualification of Attorney Irma R. Brooks as counsel of choice for the Appellant/Plaintiff, Attorney Charles T. Brooks, III, has a substantial and procedural right to represent himself and not be compelled to obtain another attorney. Therefore, the Order Disqualifying Charles T. Brooks, III, as Attorney of Record is also immediately appealable.

(C) The Challenged Order on Appeal is Outside the Record on the Case

After considering the arguments presented in the case and supporting documentation filed as a part of the record, Judge Brown issued a summary ruling and instructions as to the drafting of

This was not the instruction of the court. Further, and most importantly, no instructions was shared with counsel for the Appellant/Plaintiff to brief the matter and have an opportunity to be further heard in the case.

Therefore, the ORDER STAYING ACTION AS TO TRIAL ONLY violates the procedural due process rights of the Appellant/Plaintiff, a substantial right, and is immediately appealable and an abuse of the trial court's discretion.

CONCLUSION

Based on all of the foregoing reasons, the Appellant/Plaintiff now respectfully asks this Honorable Court to accept for immediate appeal the ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD and the ORDER STAYING ACTION AS TO TRIAL ONLY.

RESPECTFULLY SUBMITTED,



Irma R. Brooks
Attorney for Appellant/Plaintiff
THE BROOKS LAW OFFICE, LLC
309 Broad Street
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Sumter, South Carolina 29151
803-418-5708
803-934-9618
brooksirbrooks@aol.com

December 19, 2014

EXHIBIT 1

From: Brown, Craig Law Clerk (Truc Tran) (Truc Tran) <cbrownlc@sccourts.org>
To: murrellsmith <murrellsmith@leeandmoise.com>; brooksirbrooks <brooksirbrooks@aol.com>
Subject: Brooks v. SCDID
Date: Mon, Oct 13, 2014 11:49 am

Good Afternoon,

Judge Brown heard motions on this case on 10/9/2014 in Richland and has decided the following:

The case will be stayed from trial **ONLY** but discovery may still take place during the stay. Both Irma Brooks and Charles Brooks are disqualified from acting as attorneys in this case. Mr. Brooks has 45 days to retain new counsel and any outstanding discovery motions, etc, will be addressed to the new counsel. Mr. Smith, could you please draft a short proposed order to this effect and send it, along with a self-addressed stamped envelope to Judge Brown's chambers in Florence?

Sincerely,

Truc Tran

Law Clerk to the Honorable D. Craig Brown

180 North Irby Street, MSC-CC

Florence, South Carolina 29501

(843) 679-7156

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# **EXHIBIT 2**

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

Jack W. Erter, Jr.  
Harry C. Wilson, Jr. †  
David C. Holler\* ‡  
G. Murrell Smith, Jr.

Attorneys at Law  
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126 North Main Street  
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Robert W. Brown  
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\*Licensed in SC, NC & GA  
†Certified Family Court Mediator  
‡ Certified Circuit Court Mediator

Telephone: (803) 778-2471  
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October 15, 2014

Email Address: [murrellsmith@leeandnoise.com](mailto:murrellsmith@leeandnoise.com)

The Honorable D. Craig Brown  
180 N. Irby Street, MSC-CC  
Florence, SC 29501

IN RE: Charles Thomas Brooks, III v. South Carolina Commission on Indigent Defense, et al.  
Docket Number: 2012-CP-40-07200

Dear Judge Brown:

Pursuant to your email of October 13, 2014, I enclose herewith two proposed Orders in regards to the above referenced matter. You requested that these Orders be brief. I tried to make them factually correct as it relates to the arguments of the attorneys.

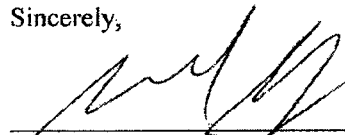
The only addition I had in this Order was that if the Plaintiffs do not retain the services of new counsel within 45 days, then the Plaintiff could continue to represent himself but shall not be allowed to testify as a witness at Trial. I presume the Court does not intend to allow the Plaintiff to substitute counsel after 45 days. Therefore, I placed that provision in there so that we can proceed with the discovery and other related issues after the 45 days of the issuance of this Order.

If you desire for that provision or any others to be changed, please let me know. By copy of this letter to Irma R. Brooks and Charles T. Brooks, III, I am hereby notifying them of my communication with the Court and providing them a copy of these proposed Orders.

Lastly, I enclose herewith a self addressed stamped envelope for your convenience. If you would execute the Orders and return them to me, I will file them thereafter with the Richland County Clerk of Court.

With kindest regards, I am

Sincerely,

  
\_\_\_\_\_  
G. MURRELL SMITH, JR.

GMSjr:mln  
Enc.

cc: Irma Brooks, Esquire (via email)  
Charles T. Brooks, III, Esquire (via email)  
J. Hugh Ryan, Esquire (via email)  
Patton Adams, Esquire (via email)  
Barry Rice (IRF Claim #: 87989)(via email only)

**THE STATE OF SOUTH CAROLINA**

**In the Court of Appeals**

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**APPEAL FROM RICHLAND COUNTY**

**Court of Common Pleas**

**Honorable D. Craig Brown, Circuit Court Judge**

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**Respondents.**

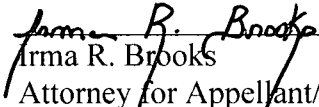
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**PROOF OF SERVICE**

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I do hereby certify that I have this 19<sup>th</sup> day of December 2014, served a copy of the **MEMORANDUM REGARDING APPEALABILITY**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

G. Murrell Smith, Jr.  
LEE, ERTER, WILSON, HOLLER, AND SMITH, LLC  
126 North Main Street  
Post Office Box 580  
Sumter, South Carolina 29151

  
Irma R. Brooks  
Attorney for Appellant/Plaintiff  
THE BROOKS LAW OFFICE, LLC  
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Post Office Box 3512  
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[brooksirbrooks@aol.com](mailto:brooksirbrooks@aol.com)

December 19, 2014

# The Brooks Law Office, LLC

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IRMA R. BROOKS, ATTORNEY AT LAW

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December 19, 2014

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SC Court of Appeals

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

RE: Charles Thomas Brooks, III v. South Carolina Commission on Indigent  
Defense and Office of Indigent Defense  
Appellate Case No. 2014-002477

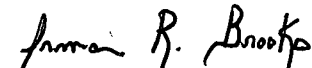
Dear Ms. Kitchings:

Enclosed, please find for filing the **MEMORANDUM REGARDING APPEALABILITY**,  
along with the appropriate copies, as well as the related Proof of Service.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



Irma R. Brooks  
Attorney for Appellant/Plaintiff  
THE BROOKS LAW OFFICE, LLC

Enclosures as stated above

cc: G. Murrell Smith, Jr.  
LEE, ERTER, WILSON, HOLLER, AND SMITH, LLC  
Post Office Box 580  
Sumter, South Carolina 29151

P



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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
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South Carolina Court of Appeals  
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