

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

The Hon. D. Craig Brown, Circuit Court Judge

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Case No. 13-CP-21-2726

Appeal No. 2015-000563

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**RECEIVED**  
MAY 12 2015  
**SC Court of Appeals**

David Bethea.....Appellant,

v.

Stefon Quamine Davis.....Respondent.

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RESPONDENT'S MEMORANDUM

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Robert T. King (#066237)  
[rking@klslawfirm.com](mailto:rking@klslawfirm.com)  
KING, LOVE & SMITH, LLC  
PO Box 1764  
Florence, SC 29503-1764  
(843) 407-5525 - Tel  
(843) 407-5782 - Fax  
ATTORNEY FOR RESPONDENT

In response to the Court's May 1, 2015 directive, Stefon Quamine Davis, the Respondent, by and through his undersigned counsel, respectfully submits this Memorandum addressing the issue of appealability, and respectfully urges that this appeal be dismissed as interlocutory.

Ordinarily an appeal may be "may be pursued only after a party has obtained a final judgment." Hagood v. Sommerville, 362 S.C. 191, 607 S.E.2d 707, 708 (2005). Whether a pretrial order is immediately appealable is controlled primarily by S.C. Code Ann. § 14-3-330. *Id.* Section 14-3-330 vests the appellate courts with jurisdiction over:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

A pretrial order "must fall within one of the enumerated subsections to be immediately appealable." Energys Del., Inc. v. Hopkins, 401 S.C. 615, 738 S.E.2d 478, 479 (2013).

"The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed." Hagood, 607 S.E.2d at 709. Under subsection (2) "[a]n

order affects a substantial right and is immediately appealable when it ‘(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]’” *Id.* (quoting S.C. Code Ann. § 14-3-330(2)). “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Id.*

Here, the Appellant, David Bethea, seeks appellate review of the circuit court’s order granting Bethea’s attorney’s motion to withdraw as counsel under Rule 1.16 of the South Carolina Rules of Professional Conduct (Rule 407, SCACR) on the basis of a deterioration of the attorney-client relationship. (*See* Order filed March 2, 2015 (the “Order”).) In the Order Bethea was granted adequate time to secure substitute counsel or choose to proceed *pro se*. (*See id.*) Final judgment has not yet been entered in the case and Bethea remains free to pursue his claims with or without counsel.

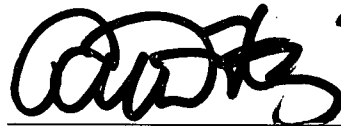
This case is unlike Hagood where the Court accepted appellate review of an order disqualifying the plaintiff’s counsel. The order at issue in Hagood resulted from the opposing party’s motion to disqualify the plaintiff’s counsel (or the plaintiff’s expert witness), and caused the involuntary separation of the plaintiff’s relationship with his attorney of choice. *See id.* The Court held, there, 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... .” *Id.* (*emphasis added*).

The Order here did not involve a “motion to disqualify” Bethea’s attorney, but instead involved Bethea’s counsel’s own motion to withdraw as a result of the

deterioration of the attorney-client relationship. The Order, therefore, did not cause the involuntary separation of Bethea from his preferred counsel, and thus does not involve the same policy considerations the Court deemed controlling in Hagood. The Order, therefore, does not fall within any enumerated subsection of 14-3-330, including subsection (2), and is thus not immediately appealable.

The Order allowing Bethea's counsel to withdraw is neither a final one which ends the case nor one which prevents final judgment from which appellate review would be possible, and is, therefore, interlocutory. *See Hagood*, 607 S.E.2d at 709. This appeal should, therefore, be dismissed.

**WHEREFORE**, the Respondent respectfully prays that this Honorable Court dismiss this appeal and remand the case to the circuit court.



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Robert T. King (#066237)  
[rking@klslawfirm.com](mailto:rking@klslawfirm.com)  
KING, LOVE & SMITH, LLC  
PO Box 1764  
Florence, SC 29503-1764  
(843) 407-5525 - Tel  
(843) 407-5782 - Fax  
ATTORNEY FOR RESPONDENTS

May 8, 2015

Certificate of Service

I, the undersigned, of the law office of King, Love & Smith, LLC, as attorneys for the Respondent, do hereby certify that I have served the RESPONDENT'S MEMORANDUM this May 8, 2015, by depositing the same in a U.S. Postal Box in envelopes, sufficient postage prepaid, properly addressed to the following:

DAVID BETHEA  
PO BOX 1861  
BENNETTSVILLE SC 29512-1861

FRANK C SWAGGARD ESQ  
WUKELA LAW FIRM  
PO BOX 13057  
FLORENCE SC 29504-3057



Robert T. King

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**KING  
LOVE &  
SMITH, LLC**  
ATTORNEYS AT LAW

135 South Dargan Street, Suite 201, Florence, SC 29506  
PO Box 1764, Florence, SC 29503-1764  
Phone 843-407-5525  
Fax 843-407-5782

214 Waller Avenue, Suite 100, Greenwood, SC 29649  
PO Box 1810, Greenwood, SC 29648-1810  
Phone 864-538-4076  
Fax 864-538-4021

[www.klslawfirm.com](http://www.klslawfirm.com)

**Reply to: Florence Office**

Robert T. King †  
Edward A. Love \*\*  
Brandon A. Smith †  
Charles J. Hupfer, Jr.  
Ashley B. Nance

† CERTIFIED MEDIATOR  
\* ALSO ADMITTED IN NC  
\*\* ALSO ADMITTED IN GA

May 8, 2015

THE HON JENNY ABBOTT KITCHINGS  
CLERK SC COURT OF APPEALS  
PO BOX 11629  
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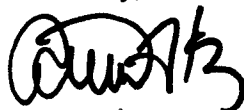
RE: Bethea v. Davis  
Appellate Case No. 2015-000563  
Claim No. 0409148730101015  
Our File 00041.01476

Dear Ms. Kitchings:

Pursuant to the Court's instructions, enclosed are the original and seven copies of the *Respondent's Memorandum* in the above-referenced matter. Please file the original and six copies in your records, and return a file-stamped copy to us in the enclosed envelope. By copy of this letter, I am hereby serving the same upon the Appellant *pro se* and his former counsel.

Thank you for your assistance with this matter.

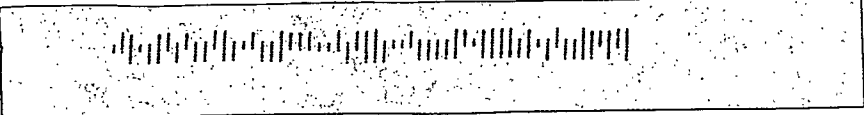
Sincerely,



Robert T. King  
[rking@klslawfirm.com](mailto:rking@klslawfirm.com)

RTK/

cc: DAVID BETHEA  
FRANK C SWAGGARD ESQ  
PHILLIP YOUNG



**KING  
LOVE &  
SMITH, LLC**  
ATTORNEYS AT LAW

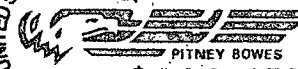
King, Love & Smith, LLC  
PO Box 1764  
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