

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

ON WRIT OF CERTIORARI

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable D. Craig Brown, Circuit Court Judge

Case No: 2014-002477

Charles Thomas Brooks, III,

Appellant,

v.

South Carolina Commission on Indigent Defense

and Office of Indigent Defense,

Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

DID THE TRIAL JUDGE ERR IN DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD IN THE CASE?

STATEMENT OF THE CASE

This case was filed in August 2012 by the Plaintiff seeking payment from the Defendants for unpaid vouchers for legal representation of indigent clients. (ROA pp 9). 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. (ROA pp 116). 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. (ROA pp 118). The public reprimand required the Plaintiff to implement a new billing system and reimbursement the Defendants for any overbilling for Rule 608 appointments. (ROA pp 118-119).

A forensic accounting was used to determine the amount of overpayment and offset required to be reimbursed to the Defendants. (ROA pp 13 and ROA 118). The adjudicated amount of the offset to be reimbursed to the Defendants as a result of the public reprimand is \$61,826.40. (ROA pp 13 and ROA 118). The adjudicated offset covers the time period of 2006 through August of 2009. (ROA pp 10). 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. (ROA pp 14). 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. (ROA pp 14). 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. (ROA pp 16).

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. (ROA pp 19)

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. (ROA pp 38)

A hearing was held by the Honorable D. Craig 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. (ROA pp 3). This appeal follows only as to the disqualification of legal counsel.

ARGUMENTS

THE TRIAL JUDGE ERRED IN DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD IN THE CASE.

(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. (ROA pp. 66-74). The Respondents/Defendants rely on one case in which Attorney Irma R. Brooks represented a parent in a termination of parental 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.

Mr. Brooks has selected his counsel as choice because this matter requires the highest level of trial advocacy skills in order to represent his interest. While it may be inconvenient for the Respondents/Defendants that counsel of choice for Mr. Brooks seeks to zealously represent the interests of Mr. Brooks, that factor alone is not enough for disqualification. All of the factors listed above from *Hagood* apply to the facts in this case and why disqualification of counsel of choice for Mr. Brooks is an abuse of discretion by the trial court.

In addition, the Respondents/Defendants assert that the majority of the billing matters were attributed to Mrs. Brooks. This is factual incorrect in that the cases involving Mrs. Brooks regarding the contested vouchers would be about two percent of the pending 170 unpaid vouchers. (ROA, p. 75).

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 and should be reversed.

(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 and should also be reversed.

In addition, there is no established case law in South Carolina that restricts a litigant from representing himself or herself. To do so would restrict a litigant from the opportunity to be fully heard and to have a meaningful hearing.

In *State v. Rivera*, 402 S.C. 225, 741 S.E.2d 694 (2013), the court concluded that a defendant has a constitutional right to present testimony in his defense. While *Rivera* is a case dealing with a criminal defendant, the court nonetheless concluded that by preventing the defendant from testifying, the trial court erred and the defendant's testimony was relevant for admissibility purposes. *Id.* at 245. Evidence is relevant and admissible if it tends to establish facts or make more probable a matter in controversy. Therefore, if counsel of choice is disqualified for the Appellant/Plaintiff, then the Appellant/Plaintiff can testify and present relevant evidence in the case.

Analogous to the case herein, the Appellant/Plaintiff still has a constitutional right to establish evidence in his case. There is no case law authority establishing that because the Appellant/Plaintiff is forced to proceed *pro se* and he is an attorney, his trial rights are restricted in a substantial way unlike any other litigant. The Appellant/Plaintiff still has a right to a full

and fair hearing, even if it means he must represent himself. In representing himself, Appellant/Plaintiff can testify and present evidence on his behalf.

Therefore, the order restricting Appellant/Plaintiff from representing himself or presenting evidence on his behalf should be reversed.

(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 the order in this case. (ROA pp 159).

However, when counsel for the Respondents/Defendants submitted the proposed order, the cover letter included the statement that the court asked that the matter be briefed. (ROA pp 158). This was not the instruction of the court. Further, and most importantly, no instructions were shared with counsel for the Appellant/Plaintiff to brief the matter and have an opportunity to be further heard in the case. The additional language added to the order by the Respondents/Defendants as to the conditions of representation for the Appellant/Plaintiff were not a part of the record and should not have been added to the order. (ROA pp 158). Specifically, the condition that if the Appellant/Plaintiff did not retain new counsel in 45 days, the Appellant/Plaintiff could represent himself, but would not be allowed to testify at trial. (ROA pp 158). There is no case law that supports this position and the addition of these terms are an abuse of discretion by the trial court. As a result, this term should be reversed and if the court rules the Appellant/Plaintiff must represent himself, and that representation is without restriction as to testifying and presenting evidence.

CONCLUSION

Therefore, the ORDER DISQUALIFYING IRMA R. BROOKS AND CHARLES T. BROOKS, III, AS ATTORNEYS OF RECORD (ROA pp 3) 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, especially as it relates to the provision that the Appellant/Plaintiff may not present himself as a witness in the case. Any restriction on the Appellant/Plaintiff presenting himself as a witness should be reversed if he is not allowed his choice of legal counsel for continued representation in this matter.

For all of the foregoing reasons, the order of the trial court should be reversed.

RESPECTFULLY SUBMITTED,



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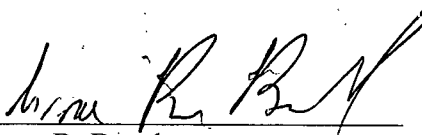
South Carolina Commission on Indigent Defense and the
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PROOF OF SERVICE

I, the undersigned, do hereby certify that on this July 20, 2015, I served the foregoing **FINAL BRIEF OF APPELLANT** as well as **Proof of Service** in this matter by depositing a true copy of it via Hand Delivery, on July 20, 2015, addressed to the following as indicated below:

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