

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Craig D. Brown, Circuit Court Judge

Appellate Case No: 2014-002477

Charles T. Brooks, III.....Appellant

v.

South Carolina Commission
on Indigent Defense and Office
of Indigent Defense.....Respondent

RECORD ON APPEAL

Irma R. Brooks
Post Office Box 3512
Sumter, South Carolina 29151
Telephone: (803) 418-5708
Facsimile: (803) 934-9618
Attorney for Appellant

G. Murrell Smith, Jr.
126 N. Main Street
Sumter, South Carolina 29150
Telephone: (803) 778-2471
Attorney for Respondent

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No.: 2012-CP-40-07200
	)	
Charles Thomas Brooks III	)	
Plaintiff	)	
vs.	)	
	)	
South Carolina Commission on	)	CONSENT ORDER ALLOWING
Indigent Defense; and	)	WITHDRAWAL OF COUNSEL
Office of Indigent Defense	)	
Defendant	)	

RICHLAND COUNTY
 FILED
 2013 FEB 19 AM 10:01
 JEANETTE M. MCBRIDE
 CLERK

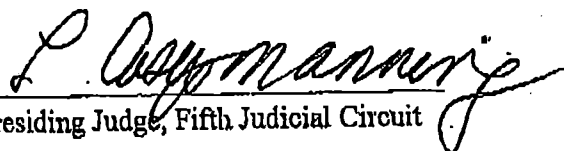
Whereas Plaintiff Charles Thomas Brooks III, after consultation with his counsel in the above-captioned matter, has requested an Order relieving Desa Ballard and Harvey M. Watson III as his legal counsel. Plaintiff intends to continue the prosecution of this matter *pro se* at this time. Plaintiff is an individual licensed in the State of South Carolina to practice law, and is thus informed and believes he can assume the responsibilities of continuing this matter *pro se* without substantial delay or disruption to the Court or the Defendants in this matter.

NOW, THEREFORE, it appearing from the signatures appearing below that such relief is requested by Plaintiff and with consent of counsel of record for Plaintiff,

It is ORDERED:

1. That Desa Ballard and Harvey M. Watson III are relieved as counsel for Plaintiff; and
2. Plaintiff shall hereafter receive directly all pleadings and other notices related to the above-captioned matter unless and until separate counsel enters a notice of appearance on his behalf.

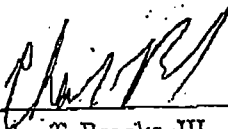
AND IT IS SO ORDERED.


 Presiding Judge, Fifth Judicial Circuit

February 19, 2013

[signature page attached]

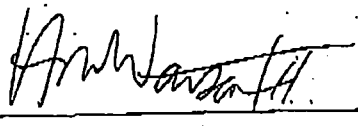
I SO MOVE:



Charles T. Brooks, III
The Brooks Law Offices, LLC
P.O. Box 3512
Sumter, South Carolina 29151

February 11, 2013

WE CONSENT:



Harvey M. Watson III
Ballard Watson Weissenstein
P.O. Box 6338
West Columbia, SC 29171

February 7, 2013

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**

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

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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P-376

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 an 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,

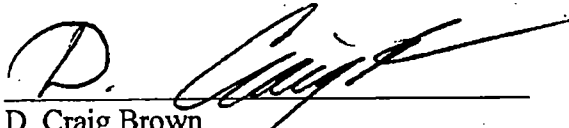
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P. 576

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.

DCB
p-676

2012 CP 400 7200
RECORDED
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

2012 AUG 28 AM 11:47

2012-CP-43-1691

Charles Thomas Brooks III

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
Case No.

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
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

RICHLAND COUNTY
FILED
2012 OCT 25 PM 4:07
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Charles Thomas Brooks III

Plaintiff

vs.

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

Defendant

RECORDED

) IN THE COURT OF COMMON PLEAS

2012 AUG 28 AM 11:47

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

2012-CP-43-

1691

COMPLAINT
(Non-jury)

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.

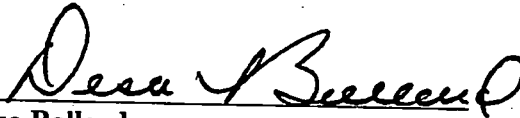
DEMAND FOR ATTORNEYS FEES AND COSTS
S.C.Code Ann. Section 15-77-300

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

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ATTORNEYS FOR PLAINTIFF

August 27, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Charles Thomas Brooks, III,

Plaintiff,

vs.

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

Defendant.

RECORDED IN THE COURT OF COMMON PLEAS
2012 SEP 28 PM 2:51 CIVIL ACTION # 2012-CP-43-1691

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

**ANSWER AND COUNTERCLAIM
OF DEFENDANTS**

FILED
2012 OCT 25 PM 12:09
JANNETTE W. MCCOY
C.C.P. & C.S.
SUMTER COUNTY

The Defendants, South Carolina Commission of Indigent Defense (hereinafter "Commission") and Office of Indigent Defense (hereinafter "OID") by way of Answer to the Complaint of the Plaintiff and Counterclaim thereto respectfully show unto this Honorable Court the following:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereby denied and strict proof demanded thereof.

**FOR A FIRST DEFENSE
(DISMISSAL OF OID)**

2. Your Defendants would show the OID is a division under the Commission which is the Agency as defined by S.C. Code Ann §15-78-30(a).

3. Pursuant to S.C. Code Ann §15-78-70, an action shall name the agency as the party. Thus it is improper to name a division of the agency.

4. Your Defendants would move to dismiss the OID from the Complaint pursuant to Rule 12(b)(1) and 12(b)(2) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(CHANGE OF VENUE)

5. Your Defendants would show that the Plaintiff has brought this action in the County of Sumter, State of South Carolina. All of the alleged acts and/or omissions complained in the Plaintiff's Complaint occurred in the County of Richland, State of South Carolina. Therefore, your Defendants would move that venue be transferred to the County of Richland, where venue is proper.

FOR A THIRD DEFENSE
(GENERAL DENIAL)

6. Your Defendants repleads all prior defenses as if set forth herein verbatim.
7. Your Defendants would admit paragraphs 1 and 2 of the Plaintiff's Complaint.
8. In regards to paragraph 3, your Defendants admit that it carries some of its duties throughout the State of South Carolina but is situated in the County of Richland, State of South Carolina. The actions alleged in Plaintiff's Complaint occurred in Richland County. The remainder of said Paragraph is denied.
9. In regards to paragraph 4, your Defendants admit so much that the Office of Indigent Defense is an administrative agency created by the General Assembly carrying out the functions entrusted to the Commission. The remainder of said paragraph is denied as written.
10. Your Defendants deny paragraph 5 as Venue in Sumter County is improper.
11. In regards to paragraph 6, your Defendants replead the responses to paragraphs 1-5 as if set forth herein verbatim.
12. In regards to paragraph 7, your Defendants admit so much of said paragraph that

Plaintiff has requested Declaratory Judgment Action but denies that this is the appropriate remedy for the relief that the Plaintiff is requesting.

13. Your Defendants admit paragraph 8.

14. In regards to paragraph 9, your Defendants admit so much as the Commission approved Regulations for the submission and payment of vouchers. The remainder of said paragraph is denied.

15. Your Defendants admit paragraph 10.

16. In regards to paragraph 11, your Defendants denies the same as written.

17. In regards to paragraph 12, your Defendants admit that there have been occasions where some issues were clarified by phone but denies the remainder of said paragraph.

18. Your Defendants admit paragraph 13 of the Plaintiff's Complaint, but that policy/provision does not apply to misrepresentation and/or gross overbilling.

19. In regards to paragraph 14, your Defendants admit so much of said paragraph that the Executive Director of the Commission filed a complaint against the Plaintiff with the Office of Disciplinary Council. The remainder of said paragraph is denied as written.

20. In regards to paragraphs 15, 16, and 17, your Defendants deny the same and demand strict proof thereof.

21. In regards to paragraph 18, your Defendants admit so much as Plaintiff through counsel asked OID to cease payments on vouchers for determination as to whether errors were made. The remainder of said paragraph is denied as written.

22. In regards to paragraph 19, your Defendants admit so much as they continued to

receive vouchers submitted by the Plaintiff. The remainder of said paragraph is denied as written and your Defendants are informed and believe that the Plaintiff owes money to your Defendants as more fully described in the counterclaims provided hereinafter.

23. In regards to paragraph 20, your Defendants deny an independent review of vouchers were obtained and demands strict proof thereof.

24. In regards to paragraph 21, your Defendants are without sufficient information and belief to admit or deny what the Plaintiff has determined and therefore denies the same and demands strict proof thereof.

25. In regards to paragraph 22, your Defendants admit that the Office of Disciplinary Council and the Plaintiff entered into a discipline by consent although those proceedings are not binding upon your Defendants.

26. In regards to paragraph 23, your Defendants admit the Supreme Court approved the agreement and instructed the Plaintiff to pay restitution to the Commission, although they do not believe that this amount is binding upon them since they were not a party to the action. The remainder of said paragraph is denied and strict proof demanded thereof.

27. In regards to paragraph 24, your Defendants deny the same as written.

28. In regards to paragraph 25, your Defendants admit that the Plaintiff claims he is owed \$110,522.85 (which your Defendants deny is accurate).

29. In regards to paragraph 26, your Defendants admit that the Plaintiff requested disbursement as written but deny the Plaintiff is owed the same.

30. In regards to paragraph 27, your Defendants admit that they have refused to pay as the amounts reflected by the Plaintiff and are not binding upon Defendants nor were the amounts accurate.

31. In regards to paragraph 28, your Defendants deny the same and would show that this is all an attempt by the Plaintiff to circumvent any challenge to his figures provided and/or prevent your Defendants from receiving a true measure of their damages created by the conduct of the Plaintiff.

32. In regards to paragraph 29, your Defendants deny the same and would further allege that there is a genuine issue of dispute between the Plaintiff and your Defendants in which it would be inappropriate for the Court to grant injunctive relief requiring your Defendants to pay funds when they allege that they are damaged in an amount beyond that the Plaintiff claims is owed to him.

33. In regards to paragraph 30, your Defendants replead their responses to paragraphs 1-29 as if set forth verbatim herein.

34. Your Defendants deny paragraph 31 and demands strict proof thereof.

35. Your Defendants admit so much of paragraph 32 that the Plaintiff has made demands for funds to which have been lawfully refused by your Defendants.

36. Your Defendant denies paragraph 33 and demands strict proof thereof.

37. In regards to paragraph 34, your Defendants admit that the individual agents are acting within the scope of their employment but deny that they have engaged in any acts and/or omissions as set forth in the Plaintiff's Complaint.

38. Your Defendants deny paragraph 35 and demands strict proof thereof.

39. In regards to paragraph 36, your Defendants deny the same and demands strict proof thereof.

40. Your Defendants would show that paragraph 37 is a statement of law which does

not require a response. Nonetheless, your Defendants admit that the State is liable for torts of its employees in the same manner and extent of private individuals. However your Defendants deny that its employees committed any torts.

41. Your Defendants deny paragraph 38 and demand strict proof thereof.

42. Your Defendants deny paragraph 39 and 40 and demands strict proof thereof.

43. In regards to paragraph 41, your Defendants replead its responses to paragraphs 1-40 as if set forth herein verbatim.

44. Your Defendants deny paragraphs 42, 43 and 44 and demands strict proof thereof.

45. Further answering paragraphs 41, 42, 43 and 44, your Defendants would show that S.C. Code Ann §15-77-300 is inapplicable to the Defendants causes of action.

46. Your Defendants deny the Wherefore clause and the entire prayer or relief.

FOR A FOURTH DEFENSE
(SET OFF)

47. Your Defendants replead all prior defenses as if set forth herein verbatim.

48. Your Defendants would show that the Plaintiff has damaged your Defendants as more fully described hereinafter.

49. Upon information and belief, your Defendants believe that they are entitled to recover damages from the Plaintiff in an amount to be determined.

50. Your Defendants would request that any amount the Plaintiff may be owed be setoff by the amount of damages incurred by your Defendants.

FOR A FIFTH DEFENSE
(UNCLEAN HANDS)

51. Your Defendants replead all prior defenses as if set forth herein verbatim.

52. Your Defendants would show that the Plaintiff is precluded from seeking

equitable relief pursuant to the Doctrine of Unclean Hands, due to his conduct that is the subject matter of this litigation.

FOR A SIXTH DEFENSE
(EQUITABLE ESTOPPEL)

53. Your Defendants replead all prior defenses as if set forth herein verbatim.

54. The Plaintiff is equitably estopped from seeking any relief in this matter due to his own conduct.

FOR A SEVENTH DEFENSE
(WAIVER AND ESTOPPEL)

55. Your Defendants replead all prior defenses as if set forth herein verbatim.

56. Your Plaintiff's claim for a conversion are barred by the Doctrines of Waiver and Estoppel.

FOR A EIGHTH DEFENSE
(FRAUD AND MISREPRESENTATION)

57. Your Defendants replead all prior defenses as if set forth herein verbatim.

58. Your Plaintiff's claims for a conversion are barred by the Plaintiff's own fraud and/or misrepresentation.

FOR A NINTH DEFENSE
(IMMUNITY)

59. Your Defendants replead all prior defenses as if set forth herein verbatim.

60. Your Defendants specifically pleads immunity, both absolute and qualified as a complete bar to the allegations of the Plaintiff's Complaint.

FOR A TENTH DEFENSE
(SOVEREIGN IMMUNITY)

61. Your Defendants replead all prior defenses as if set forth herein verbatim.

62. Sovereign immunity is pled as an absolute defense to the Plaintiff's prayer for

relief.

FOR AN ELEVENTH DEFENSE
(TORT CLAIMS ACT LIMITATIONS)

63. Your Defendants replead all prior defenses as if set forth herein verbatim.

64. Your Defendants pleads the Plaintiff's right of recovery, if any, is governed and limited by said Tort Claims Act, including, but not limited to the following:

- a. Your Defendants are not liable for loss of any legislative, judicial, or quasi-judicial act or inaction (S.C. Code Ann §15-78-60 (1).
- b. Your Defendants are not liable for any loss resulting from adoption, enforcement or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to any charter, division, ordinance, resolution, rule, regulation or written policy (S.C. Code Ann §15-78-60 (4).
- c. Your Defendants are not liable for any loss resulting from the exercise of discretion or judgment by the governmental entity or employer for performance or failure to perform any act of service which is in the discretion or judgment of the governmental entity or employee. (S.C. Code Ann §15-78-60 (5).
- d. Your Defendants are not liable for the institution or prosecution of any judicial or administrative proceeding. (S.C. Code Ann §15-78-60 (23))
- e. Your Defendants specifically plead the provisions of S.C. Code Ann §15-78-120 and the limitations on liability and the cap on damages, including the prohibition against the recovery of punitive damages.

- f. Your Defendants plead the applicable Statute of Limitations pursuant to S.C. Code Ann §15-78-110 as a complete bar to the Plaintiff's requested relief.

FOR A TWELFTH DEFENSE
(INAPPLICABILITY OF S.C. CODE ANN §15-77-300 TO PLAINTIFF'S CLAIMS)

65. Your Defendants replead all prior defenses as if set forth herein verbatim.
66. The Plaintiff's request for attorneys fees under S.C. Code Ann §15-77-300 is not applicable as the Plaintiff's sole and exclusive remedy in this action in the South Carolina Tort Claims Act to which S.C. Code Ann §15-77-300 is inapplicable.

FOR A THIRTEENTH DEFENSE
(COMPARATIVE NEGLIGENCE)

67. Your Defendants replead all prior defenses as if set forth herein verbatim.
68. Your Defendant would show, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to his own negligence, careless, reckless and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injuries or damages, if any, which such injuries or damages would not have occurred; such negligence, careless, reckless and grossly negligent acts or omissions on the part of the Plaintiff being more particular set forth as follows:
- a. Then and there failing to exercise a degree of care and caution that a reasonable and prudent attorney would make under same or similar circumstance;
 - b. in then and there failing to oversee staff and/or others to assure that was accurate billing practices maintained within the Plaintiff's office;

- c. in then and there failing to ensure that there are appropriate policies and procedures within the Plaintiff's office to have appropriate billing entries and make contemporaneous billing entries on files;
- d. in then and there failing to properly supervise employees and/or others working within the Plaintiff's law practice pursuant to Rule 5.1 and 5.2 of the South Carolina Rules of Professional Conduct.
- e. in then and there failing to ensure accuracy in legal bills and vouchers submitted to your Defendant for reimbursement;
- f. in then and there not keeping contemporary time records and then "recreating" bills for submission for reimbursement by your Defendants;
- g. in then and there submitting inaccurate and false invoices for reimbursement to your Defendants;
- h. and such other and further particulars that may be shown at trial.

All of which were the direct and proximate cause of any injuries or damages sustained by the Plaintiff and Defendant pleads such negligence, carelessness, recklessness, and gross negligence on the part of the Plaintiff would ask this Court to compare the negligence of the Plaintiff and the Defendant and if it is determined that the Plaintiff's negligence, careless, recklessness and gross negligence was greater than the negligence, careless, recklessness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff should be totally barred from recovering and if it is determined that the Plaintiffs negligence, careless, recklessness and gross negligence is equal to or less than the negligence of the Defendant, then the amount of recovery available to the Plaintiff should be reduced by the percentage of the Plaintiff's own negligence, careless, recklessness and gross negligence.

FOR A FOURTEENTH DEFENSE AND BY WAY OF
DEFENDANTS' FIRST COUNTERCLAIM
(CONVERSION)

69. Your Defendants replead all prior defenses as if set forth herein verbatim.

70. The South Carolina Commission on Indigent Defense (hereinafter Commission) is a state agency created by the General Assembly as provided by S.C. Code Ann. §15-78-30 (a).

71. The Commission is headquartered in the State of South Carolina, County of Richland and all payment of vouchers to a private attorney occurs in the County of Richland, State of South Carolina.

72. The Plaintiff is a citizen and resident of the State of South Carolina licensed to practice law and his primary office is located in the County of Sumter, State of South Carolina.

73. The Plaintiff has served, volunteered or substituted as appointed counsel on cases where the client is indigent and has requested representation under the Defense of Indigents Act.

74. The Plaintiff has submitted vouchers for payment to the Commission to be paid for services in accordance with his representation of the Defense of Indigents Act for a number of years.

75. On or about the end of September, 2009, it came to the attention of T. Patton Adams, IV, acting in his capacity as Executive Director of the Commission, that there were questionable billing entries submitted by the Plaintiff from October of 2006 through September 2009. These entries were only recognized due to the implementation of a new computer system that required all vouchers to be submitted "online".

76. Once the billing entries came to the attention of the Executive Director, the vouchers submitted between October 2006 and September 2009 were analyzed by an employee of the Commission. It was determined that there were vouchers that were submitted that

contained gross overbilling and misrepresentations. Upon those discoveries, the Executive Director of the Commission reported these findings to the appropriate agencies for review and determination if, in fact, misconduct had occurred.

77. Your Defendants are informed and believe that the Plaintiff solicited and/or received referrals from other attorneys who were appointed to represent indigent clients pursuant to SCACR 608. The Plaintiff received a "referral fee" for this substitution of counsel and did not report the "referral fee" to the Commission as required therein. The Commission is entitled to a setoff of this "referral fee" prior to reimbursement of invoices to Plaintiff.

78. The Plaintiff and the Office of Disciplinary Counsel entered into an agreement for discipline by consent which was approved by the South Carolina Supreme Court. In that proceeding, the Plaintiff admitted that he "substantially over billed for his representation of indigent clients and acknowledged the systematic problems with his billing practices." Furthermore, the Plaintiff "billed for items the SCCID (hereinafter known as the Commission) does not consider compensable, namely work performed by paralegal staff and particular travel time. Respondent (Plaintiff herein) further explains that some work was reported under his name when it was actually performed by his wife, another attorney in his firm."

79. The Plaintiffs (and perhaps others) have converted to his possession, funds that were not due and payable that rightfully belonged to the Commission as set forth above.

80. The Commission has made due demand for said funds, which demands have been refused by the Plaintiff.

81. The Plaintiff is liable to the Defendants for conversion of funds in an amount to be determined by the Court. The Plaintiff has wrongfully and willfully converted these funds and received the benefit of them for numerous years.

82. Your Defendants have incurred in addition to the loss of these funds, loss of interest income and other actual and consequential damages as a direct and proximate result of the willful and wrongful conversion of the Plaintiff.

83. As a direct and proximate result of the Acts and Omissions of the Plaintiff, your Defendants believe that the Plaintiff is liable to them for actual damages to be determined by the trier of fact as well as punitive damages for the willful conversion of funds.

**FOR A FIFTEENTH DEFENSE AND BY WAY OF
DEFENDANTS' SECOND COUNTERCLAIM
(RESTITUTION /MONEY HAD AND RECEIVED)**

84. Your Defendants replead all prior defenses as if set forth herein verbatim.

85. Your Defendants would show that the Plaintiff engaged in a pattern of overbilling and misrepresentation of time spent in the representation of individuals under the Defense of Indigents Act.

86. Your Defendants are informed and believe that the parties had a contract implied in law for the services rendered by the Plaintiff.

87. Your Defendants would show that the Plaintiff received monies that he was not entitled to under the implied contract in law with your Defendants.

88. Your Plaintiff is informed and believes that the Plaintiff has money belonging to the Defendants which in equity should be repaid to the Defendants.

89. Your Defendants are informed and believe that the Plaintiff should make restitution to the Defendant for the overbilling and misrepresentation under the theory of money had and received.

FOR A SIXTEENTH DEFENSE AND BY WAY OF
DEFENDANTS' THIRD COUNTERCLAIM
(BREACH OF CONTRACT)

90. Your Defendants replead all prior defenses as if set forth herein verbatim.

91. Your Defendants would show that the Plaintiff entered into a binding oral and/or implied contract to perform a service pursuant to the policies, regulations and guidelines as promulgated by the Commission. The Plaintiff agreed to perform certain work pursuant to those policies, guidelines and/or regulations.

92. The Plaintiff failed to abide by the implied and/or oral contract of the parties by overbilling and misrepresenting his actual time devoted to cases.

93. As a result of the Plaintiff's breaches as enumerated herein above (and at other times and in other manners) damages to your Defendants as a direct and proximate result of the breach.

94. Your Defendants are informed and believe that they are entitled to actual and consequential damages as to be determined by the trier of fact.

FOR A SEVENTEENTH DEFENSE AND BY WAY OF
DEFENDANTS' FOURTH COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

95. Your Defendants replead all prior defenses as if set forth herein verbatim.

96. Your Defendants would show that the Plaintiff's had a contract implied in law and/or oral with your Defendants as described herein above.

97. Your Defendants would show that the Plaintiff breached this contract with fraudulent intent by over billing and misrepresenting actual work devoted to his files for vouchers that were submitted between 2006 and 2009.

98. Your Defendants are informed and believe that the Plaintiff's breach of this

contract was accompanied by fraudulent acts and Defendants are entitled to damages both actual and punitive as to be determined by the trier of fact.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF
DEFENDANTS' FIFTH COUNTERCLAIM
(QUANTUM MERUIT)

99. Your Defendants replead all prior defenses as if set forth herein verbatim.

100. Your Defendants would show that the Plaintiff was unjustly enriched at the expense of your Defendants due to the acts complained herein above.

101. Your Defendants would show by over billing and/or misrepresenting billing entries for work performed as described herein above, the Plaintiff was paid for services that were not provided.

102. The Plaintiff knew or should have known that he was receiving money for work that was not performed.

103. The Plaintiff received monies for work that was not performed which would make it unjust for him to retain without paying its value.

104. Your Defendants are informed and believe that they are entitled to actual damages as well as pre-judgment interest for the monies that were paid to the Plaintiff as a result of this unjust enrichment.

FOR A NINETEENTH DEFENSE AND BY WAY OF
DEFENDANTS' SIXTH COUNTERCLAIM
(VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT)

105. Your Defendants replead all prior defenses as if set forth herein verbatim.

106. Your Defendant is informed and believes that Plaintiff committed an unfair or deceptive act or practice in trade or commerce and the conduct of the Plaintiff as

described herein above is a violation of the South Carolina Unfair Trade Practices Act as provided by S.C. Code Ann. §3-9-5-10 et seq. The conduct of the Plaintiff offends the established public policy and is immoral, unethical, oppressive, scrupulous and/or substantially injurious to consumers. Plaintiff's conduct amounted to a willful violation of the "Act".

107. As result of the acts as described herein above of the Plaintiff, your Defendants suffered an ascertainable loss of money due to the unfair and deceptive methods and/or acts of the Plaintiff.

108. As a result of the unlawful trade act practiced and engaged in by the Plaintiff, Your Defendants suffered actual and ascertainable damages including but not limited to monies paid to the Plaintiff for work that was not performed.

109. Your Defendants are informed and believe that they are entitled to actual and punitive damages in an amount to be determined by the finder of fact. Furthermore, your Defendants are informed and believe that they are entitled to an award of treble damages and attorneys fees as the method, act or practice engaged by the Plaintiff was willful and/or a knowing violation in that the Plaintiff knew or should have known that his conduct was in violation of the South Carolina Unfair Trade Practices Act.

FOR A TWENTIETH DEFENSE AND BY WAY OF
DEFENDANTS' SEVENTH COUNTERCLAIM
(NEGLIGENCE)

110. Your Defendants replead all prior defenses as if set forth herein verbatim.

111. On or about 2006 and continuing through present, your Defendants are informed and believe that the Plaintiff submitted invoices and/or billing statements to your Defendants for reimbursements all of which contained numerous misrepresentations and/or inaccuracies.

112. On occasions mentioned above, the Plaintiff was negligent, grossly negligent,

careless, reckless, and wanton in one or more of the following particulars:

- a. Then and there failing to exercise a degree of care and caution that a reasonable and prudent attorney would make under same or similar circumstance;
- b. in then and there failing to oversee staff and/or others to assure that was accurate billing practices maintained within the Plaintiff's office;
- c. in then and there failing to ensure that there are appropriate policies and procedures within the Plaintiff's office to have appropriate billing entries and make contemporaneous billing entries on files;
- d. in then and there failing to properly supervise employees and/or others working within the Plaintiff's law practice pursuant to Rule 5.1 and 5.2 of the South Carolina Rules of Professional Conduct.
- e. in then and there failing to ensure accuracy in legal bills and vouchers submitted to your Defendant for reimbursement;
- f. in then and there not keeping contemporary time records and then "recreating" bills for submission for reimbursement by your Defendants;
- g. in then and there submitting inaccurate and false invoices for reimbursement to your Defendants;
- h. and such other and further particulars that may be shown at trial.

113. That the conduct of the Plaintiff as set forth above was a proximate cause of your Defendants damages including but not limited to monies that were improperly paid to Plaintiff.

114. The negligence of the Plaintiff as described herein above was a direct and

proximate result of the damages incurred by your Defendants and the Plaintiff is liable to your Defendants for actual and consequential damages as provided herein.

115. Your Defendants are informed and believe that they are entitled to judgment against the Defendant for actual and consequential damages as well as any punitive damages that may be determined by the trier of fact.

FOR A TWENTY FIRST DEFENSE AND BY WAY OF
DEFENDANTS' EIGHTH COUNTERCLAIM
(NEGLIGENT MISREPRESENTATION)

116. Your Defendants replead all prior defenses as if set forth herein verbatim.

117. Your Defendants would show that the Plaintiff made false representations to your Defendants by submitting billing statements and/or invoices that were false, misleading and inaccurate for reimbursement of work performed in connection with his representation of Indigent Defendants.

118. Your Defendants would show that Plaintiff had a pecuniary interest in making such statements that were false or misleading in that he was reimbursed by your Defendants for these invoices.

119. Your Defendants are informed and believe that the Plaintiff owed a duty of care to your Defendants to ensure that the invoices and/or billing statements were truthful and accurate when communicated to your Defendants.

120. Your Defendants would show by the Plaintiff submitting inaccurate and misleading invoices and/or billing statements, he breached the duty of care owed to your Defendants and failed to exercise due care.

121. Your Defendants would show that they justifiably relied on the truthfulness and

accuracy of the invoices and/or billing statements submitted by the Plaintiff by reimbursing him for the services that the Plaintiff provided which were inaccurate and misleading.

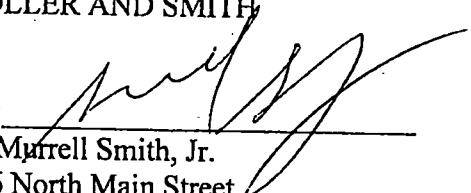
122. Your Defendants would show that they suffered a pecuniary loss of money as a direct and proximate result of their reliance on the representations made by the Plaintiff, to which have now been demonstrated to be false.

123. Your Defendants are informed and believe that they are entitled to actual damage as a result of the Plaintiff's negligent misrepresentation as to be determined by the trier of fact.

WHEREFORE, having fully answered the Complaint of the plaintiff and Counterclaim thereto, your Defendants would request that the Plaintiff's Complaint be dismissed in its entirety and that the Defendants be awarded actual damages, consequential damages, pre-judgment interest, treble damages, punitive damages and attorneys fees in accordance with their Counterclaim.

RESPECTFULLY SUBMITTED.

LEE, ERTER, WILSON, JAMES,
HOLLER AND SMITH

By: 

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Sumter, South Carolina 29151
[803] 778-2471(P) 803-778-1643 (F)
murrell@leeandmoise.com

September 28, 2012.

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 DISQUALIFY
COUNSEL

RICHLAND COUNTY
FILED
2014 AUG 18 PM 12:47
JEANNETTE M. McBRIDE
C.C.P. & G.S.

TO: THE PLAINTIFF ABOVE NAMED AND HIS ATTORNEY, IRMA R. BROOKS, ESQUIRE:

PLEASE TAKE NOTICE that Defendants by and through the undersigned attorney will move for the presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit ten (10) days after Service is hereby provided upon you for an Order Disqualifying the Attorney for the Plaintiff pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct.

The basis of this Motion is that Irma R. Brooks forwarded the enclosed letter dated August 5, 2014 stating that she was filing a Notice of Appearance as Attorney of Record in this matter. Your Defendants have not received such Notice as to date but have received Notice of Depositions and Subpoenas from Irma R. Brooks, Esquire advising that she is attorney for the Plaintiff.

Your Defendants would show that the parties have exchanged Discovery and your Defendants attach hereto and incorporate herein, a copy of your Defendants' Responses to the Plaintiff's Interrogatories. Your Defendants would show that they have listed Charles T. Brooks, III, Esquire and Irma R. Brooks, Esquire as witnesses in this matter. Furthermore, your Defendants attach hereto and incorporate herein, correspondence concerning vouchers of Janice Cooper and Stanley Epps. Your Defendants would show that these vouchers were the genesis of the Discovery

of the over-billing practices of the Plaintiff, Charles T. Brooks, III. Without going into the facts of the case, your Defendants would show that Irma R. Brooks is a necessary witness to demonstrate the conduct and practice of over-billing by the Plaintiff. Your Defendants have named her as a material witness since December 14, 2012 and intends to take her Deposition. Furthermore, your Defendants intend to call her as a witness at trial.

Your Defendants would move to disqualify Charles T. Brooks, III from representing himself Pro Se. Again, Mr. Brooks is an integral witness to the facts of your Defendants' case. There is no doubt that Mr. Brooks is going to have to testify in this case.

Rule 3.7 of the South Carolina Rules of Professional Conduct prohibit dual roles of an attorney acting as an advocate and witness. Rule 3.7 provides in relevant part:

- A. A lawyer shall not act as an advocate in trial in which the lawyer is likely to be a necessary witness unless: 1) The testimony relates to uncontested issues; 2) The testimony relates to the nature and value of legal services rendered in the case; or 3) Disqualification of the lawyer would work substantial hardship to the client. 407 SCACR, Rules of Professional Conduct 3.7.

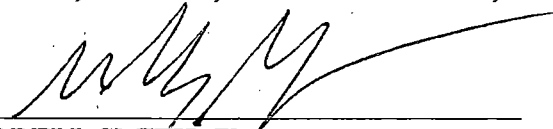
None of these exceptions enumerated in this Rule are present in this case.

Therefore, the Attorney for the Plaintiff cannot serve as a witness and advocate in this case. The Attorney for the Plaintiff, Irma R. Brooks, is a material witness in the Defendants' case and your Defendants would move to disqualify her from representing the Plaintiff.

Furthermore, your Defendants would also show that the Pro Se Plaintiff is a material witness in this case. The Plaintiff cannot act as an attorney and an advocate pursuant to the Rules of Professional Conduct. Therefore, your Defendants would move to disqualify the Plaintiff from representing himself Pro Se and/or in the capacity of an attorney.

Respectfully submitted.

LEE, ERTER, WILSON, HOLLER & SMITH,
L.L.C.



G. MURRELL SMITH, JR.

Attorney for Defendant South Carolina Commission
On Indigent Defense and Office of Indigent Defense
P.O. Box 580

Sumter, South Carolina 29151

(803) 778-2471/Fax No: (803) 778-1643

murrellsmith@leeandmoise.com

August 12, 2014.

1 State of South Carolina
2 County of Richland
3
4
5 Charles Thomas Brooks, III)
6 Plaintiff,) Transcript of Record
7 v.) 12-CP-40-7200
8 South Carolina Commission)
9 on Indigent Defense and)
Office of Indigent Defense)
10 Defendants.)

11
12 October 9, 2014
Columbia, South Carolina

13
14 B E F O R E:

15 The Honorable D. Craig Brown, Judge.
16

17 A P P E A R A N C E S:

18 Irma R. Brooks, Esquire
19 Attorney for the Plaintiff

20 G. Murrell Smith, Jr., Esquire
21 Attorney for the Defendant

22
23
24
25 Stacy L. Sheppard, RPR
Circuit Court Reporter

I N D E X

WITNESSESDIRECTCROSSREDIRECTRECROSS

(There were no witnesses.)

E X H I B I T S

NO.DESCRIPTIONID.EVD.

(There were no exhibits.)

1 (The following proceedings were held on
2 October 9, 2014.)

3 **THE COURT:** Good afternoon.

4 **MR. SMITH:** Good afternoon, Judge.

5 **THE COURT:** Are you, Ms. Brooks?

6 **MS. BROOKS:** Yes, I am.

7 **THE COURT:** How are you today?

8 **MS. BROOKS:** I'm good.

9 **THE COURT:** All right. We're here on
10 defendant's motion to stay and to disqualify
11 plaintiff's counsel. Are there any other matters
12 that we're here on today?

13 **MR. SMITH:** Judge, there's also a motion to
14 compel that's pending before the Court.

15 **THE COURT:** All right. Mr. Smith, I'll be
16 happy to hear from you first with regards to your
17 motion to stay and disqualify.

18 **MR. SMITH:** Thank you, Your Honor. May it
19 please the Court.

20 Judge, let me just say a couple things
21 prefacing this: Sorry about being late. I was at
22 the Court of Appeals and that ran behind. And I
23 appreciate you accommodating us. And I may be
24 spouting off about gross negligence and the Tort
25 Claims Act over this. My head's not into it. And I

1 have to tell the Court right now also, I apologize,
2 but my family was blowing my phone up and that my
3 grandfather just passed away, so I've also got that
4 on my mind right now.

5 **THE COURT:** Sorry to hear about --

6 **MR. SMITH:** That's all right. So let me just
7 talk to you a little bit, let me give you the basic
8 facts of this case as best I can do it. And I
9 forwarded to the Court the memorandum and I
10 basically stand on that.

11 **THE COURT:** And I've read your memorandum in
12 its entirety.

13 **MR. SMITH:** Yes, sir. Do you need me to recite
14 the facts?

15 **THE COURT:** I'll let you put on the record what
16 you so desire to put on the record, but your
17 memorandum was forwarded to me. I've reviewed it in
18 its entirety. Has it been filed with the clerk's
19 office?

20 **MR. SMITH:** Judge, I do not think so. We had a
21 little mishap, as you know, with the courts and all
22 that, and then I just completely got wrapped up in
23 the other thing I was doing. So I -- the facts are
24 what they are, Judge, and you see that. And I think
25 the motion to stay is probably, let me deal with

1 that one first, and that's probably the more
2 critical issue that we have in regards to this case.
3 Judge -- and as you see, obviously they had
4 instituted a suit against us and we counterclaimed
5 in that regard.

6 The central issue in this case is how much
7 money is owed, and you see that. And you can see if
8 -- Ms. Brooks has filed a return and they claim
9 we're bound by res judicata, that we're not allowed
10 to get into the issue of damages, that damages were
11 defined by the disciplinary opinion of the court.

12 Judge, we've submitted In Re: Archer and all
13 that, and, you know, it's going to get into
14 overarching issues. But, in essence, Judge,
15 nobody's ruled on that yet. And I think it would be
16 improper, they keep saying you're not entitled, you
17 know, part of their reason about the stay is, you
18 know, this issue has been litigated, that's
19 irrelevant, that only can be applied prospectively,
20 it can't be applied retroactively once under
21 consideration by the Supreme Court, Judge. But the
22 problem is nobody's ruled upon that. That's an
23 issue that needs to be determined on the merits
24 here.

25 And so, you know, the critical issue of this

1 case is, you know, they claim we owe them money for
2 vouchers that went unpaid during this period of time
3 that they asked not to process them. Judge, we
4 filed a counterclaim, and I think it's more
5 important, they owe us money. And they incurred
6 damages, and I mean, you know, obviously lots of
7 damages, and as a result of that is what was paid to
8 you by other attorneys and that has to be offset.

9 They keep talking about a policy change that
10 occurred. Judge, there was no policy change that
11 occurred. There was a reaffirmation of a policy
12 with them that this is the policy of the South
13 Carolina Commission of Indigent Defense. We can
14 argue all day long about whether that was a
15 reaffirmation or not, but regardless, there is no
16 barrier, especially during discovery. The Court
17 knows the Samples versus Mitchell case, as long as
18 it's relevant, discovery is very broad, and that's
19 what we're getting into here.

20 So when we get into the stay case, we've got an
21 action pending before the Supreme Court that says,
22 you know, that these monies received on behalf of
23 third parties, i.e. attorneys, is that a issue -- is
24 that, you know, should that money be accounted for
25 when you process the vouchers on the little portion

1 of the voucher that says, Party paid, you know,
2 Portion paid by third parties? The Supreme Court's
3 going to rule on that.

4 And so that -- why -- and what we're saying
5 here, Judge, is that ought to be -- we ought to wait
6 and stay this action. And I've cited the law in
7 there. They cite Rule 62, which I say, Judge, is
8 not applicable. That's a stay on final judgments.
9 But we do this stay that's listed. There's a number
10 of cases that are listed in there. And, certainly,
11 the Court has an inherent ability to issue a stay,
12 especially when there's another action pending, this
13 Court resolve this issue.

14 And, Judge, if this case keeps getting put on
15 the roster and we enter into a consent order that
16 gives 120 days and, you know, very well we may end
17 up trying this case before the Supreme Court rules
18 on the case that's pending before them in original
19 jurisdiction, I think it's a great waste of court
20 resources of time. There will two or three -- there
21 will be a couple days. There's experts we're going
22 to have to retain to give opinions on this question
23 for us to go try to get a circuit court to answer a
24 question that's pending up before the Supreme Court.

25 That answer's going to be that -- that

1 question's going to eventually be answered. And
2 when it is answered, that's going to resolve a large
3 portion of the case because the Supreme Court is
4 going to say, A, you owe the money and you're
5 entitled to that offset and you should deduct it
6 from your vouchers or, alternatively, they'll say,
7 no, you can't do that, and then that's off the
8 table.

9 But to allow this action to continue pending
10 while that's being there and it's eventually going
11 to be resolved, it's not going to take forever to
12 get resolved, and that's going to cut a major
13 portion of this case. And it makes no sense. What
14 if you heard this case, Judge, you made the ruling
15 that they're entitled -- that we're entitled to --
16 or they're entitled to have disclosed it and they
17 had to deduct that from what their bill of
18 submissions were to the CID and then the Supreme
19 Court comes and says the opposite, then we've got to
20 come back here and try the case all over again, and
21 that just doesn't make sense. That's why we have
22 this equitable stay in the broad discretion of the
23 court.

24 And I've cited the case law. And, Judge, I
25 just don't think there's, you know, it's almost

1 exactly on point when you've got two actions pending
2 with the same issue.

3 They want to say, no, that's not the same
4 issue. Judge, it is an issue that's not resolved,
5 no court's resolved it. And I don't think that
6 there's any pretrial ruling, absent a motion in
7 limine prior to trial, that says you're not allowed
8 to request damages pursuant to the fact that I
9 collected money from third parties. You can't just
10 say, that's ruled upon, it's res judicata and so I'm
11 not going to talk about that.

12 And that's the issue they take with this case
13 is, you know, is, in essence, we say it's res
14 judicata so that's not an issue, let's move on and
15 there are other issues. And that's not so, Judge.
16 I mean, you know, I'm entitled to present whatever
17 damages I want until the Court rules it out of
18 order.

19 So I think that's a key issue here, Judge.
20 It's a waste of court resources. It's a waste of
21 money by the Indigent Defense Commission and by the
22 plaintiff here to defend and litigate this issue on
23 two fronts. That's why we went, and once and for
24 all, petitioned the Supreme Court that, in its
25 original jurisdiction, to have the question

1 answered. The Supreme Court adopted that. I mean,
2 they adopted that. And I think it's their intention
3 they want to answer that question. And it wouldn't
4 make sense for this court, you know, the common
5 pleas court to answer that question.

6 So we'd ask for a stay pending the ruling of
7 the family court -- I mean, of the Supreme Court and
8 let us continue to -- we can continue discovery and
9 have it ready. I don't think it's going to be much
10 prejudice. I mean, staying is not going to stop the
11 discovery.

12 **THE COURT:** Well, that was going to -- you kind
13 of bled into my question. You may have just
14 answered what I was going to ask you is allow
15 discovery to proceed but -- or that the case not be
16 called to trial until the Supreme Court decides that
17 issue. Is that what you're proposing here?

18 **MR. SMITH:** Yes, sir, absolutely.

19 **THE COURT:** Separate and apart from retention
20 of the experts and deposing the experts on that very
21 issue.

22 **MR. SMITH:** Yes, sir. Yes, sir. I just think
23 -- I mean, we need to continue this case moving.
24 It's been stuck in neutral for a while and so we
25 want to move it. And we actually had a deposition,

1 notices to quash, motions to quash and we resolved
2 all those. And so I would propose that discovery go
3 forward, but just, you know, that we don't try this
4 case until we get that ruling from the Supreme
5 Court.

6 **THE COURT:** Well, even if I order or allow
7 discovery to go forward, I would ask or would it be
8 still necessary for you all to retain and depose
9 these experts on this issue? Say the Supreme Court
10 rules in your favor and says, you've got to account
11 for it, will it be a necessity or will there be some
12 overlapping discovery so to speak with fact
13 witnesses as opposed to these experts that you have
14 to go back and depose again on that very issue?
15 Does that make sense?

16 **MR. SMITH:** Yes, sir. I don't think there will
17 be -- I mean, the only fact witnesses is, and we're
18 going to deal with this when we deal with the motion
19 to compel, is going to be, you know, who paid what
20 to where. And if they disclose to me who paid them
21 money, then I may not have to go out and depose.

22 And, you know, just for the Court's
23 information, when this all occurred, there was a
24 letter sent out to the attorneys who they saw were
25 substituted. And the Commission of Indigent Defense

1 sent out letters to attorneys, said, were you --
2 were you -- did you pay the plaintiff to assume that
3 representation? So there are some answers back.
4 You know, if they deny that there were payments, we
5 might have to go do discovery in that regard if they
6 don't produce it.

7 But I think, you know, that issue, Judge, I
8 don't intend to start taking fact witnesses on that
9 issue. I presume that's what, you know, as I point
10 out in the memorandum, Judge Newman has been
11 appointed as a special referee to make those
12 findings of fact, and I think it will be duplicative
13 efforts for us to do it on the trial level and do it
14 up in the Supreme Court. I'd rather do it in the
15 Supreme Court and let the Supreme Court rule on that
16 issue.

17 **THE COURT:** Okay. Anything further on the
18 stay?

19 **MR. SMITH:** No, sir.

20 **THE COURT:** All right. Ms. Brooks, I'm happy
21 to hear from you on that issue.

22 **MS. BROOKS:** May it please the Court, Your
23 Honor. And I apologize that I did not have an
24 opportunity to get to you in advance of this hearing
25 the return to the motions or our memorandum in

1 support. May I walk up and hand that to you,
2 please?

3 **THE COURT:** Yes, ma'am.

4 Mr. Smith, do you have a copy of this?

5 **MR. SMITH:** Judge, I do. I have not had the
6 chance to review it. It was just handed to me, so.

7 **THE COURT:** Okay.

8 **MS. BROOKS:** Your Honor, on the motion for
9 stay, a number of things that are significant
10 regarding the Supreme Court case: Of course, the
11 Supreme Court case was filed after this lawsuit was
12 filed. It is a significant factual issue about
13 whether there was a policy change where the
14 defendants are now asserting that money paid from
15 attorney to attorney to be substituted on this Rule
16 608 case would amount to fees that need to be
17 disclosed that would come out of money the
18 substituted attorney would seek to get for
19 representation. That is a factual issue. That's
20 why we have this matter being referred to Judge
21 Newman as the master on this particular case.

22 The problem, though, when we look at a stay,
23 the court has great discretion to look at and
24 determine whether a stay should be granted. When we
25 look at the case that the defendants have relied on

1 in their memoranda, they rely on Talley versus
2 John-Mansville Sales Corp, a 1985 case, and part of
3 the considerations that they mention there would be
4 the convenience of the parties and witnesses,
5 damage, hardship or inequity to either party and the
6 likelihood of a prompt disposition of the first
7 filed action. Of course, this action in the lower
8 court was the first filed action and it was filed
9 after the disciplinary case was resolved where the
10 plaintiff was seeking payment based on pending
11 vouchers.

12 The issue with the Supreme Court, we had a
13 hearing back in late April regarding a number of
14 motions pending in that case. Here we are into
15 October and we still do not have a ruling.

16 So Mr. Smith answered to you that the Supreme
17 Court case will eventually be answered and that's
18 true, but eventually could mean two, three years
19 from now when we look at the trajectory that we're
20 going on when we had a motion hearing back in April
21 and it's now almost six months later and we don't
22 even have an order from that particular hearing. So
23 the likelihood that this lower court case would be
24 disposed of first is relevant and should be taken
25 into account by the Court regarding whether a stay

1 should be issued, particularly also the factor about
2 damage and hardship or an inequity to either party.

3 Well, there's a severe hardship on the
4 plaintiff regarding having expended time, energy and
5 effort to represent indigent clients and to not get
6 compensated for that. So by staying this case, the
7 Court would also be staying the possibility of
8 resolution of this case so that the plaintiff can
9 recover for legal fees earned for the representation
10 of indigent clients.

11 So this isn't just, you know, let's hear what
12 the Supreme Court is going to say and then let's
13 come back and figure out this case. The two cases
14 are distinctly different because one thing that the
15 Supreme Court case is looking at is the
16 characterization of these particular funds. The
17 case before you is looking at not so much the
18 characterization of those funds, but the fact that
19 the plaintiff has earned that by representing these
20 indigent clients and should have an opportunity to
21 collect for those legal fees.

22 In Re: Brown stated, Once the legal fees have
23 been earned by the attorney for the representation
24 of indigent clients, any withholding of not paying
25 for those fees would be a taking. So that would

1 create a further significant hardship on the
2 plaintiff by staying this particular case.

3 Also, Your Honor, the Supreme Court case, it is
4 relevant that it's a declaratory judgment action
5 looking at how this Rule 608 characterization of
6 funds from attorney to attorney whether that is, in
7 fact, paid on behalf of a defendant, which is our
8 position. And the professional rules of conduct
9 also indicate attorneys cannot pay fees on behalf of
10 a client, that would be an ethical violation of the
11 professional rules. But the Supreme Court's action
12 can only have prospective application regarding how
13 these fees are characterized.

14 **THE COURT:** Is that not best an argument for
15 the Supreme Court to make a decision on as to
16 whether or not it's prospective or retroactive?

17 **MS. BROOKS:** It is best for the Supreme Court,
18 but it's a factor for this Court to take regarding
19 whether you're going to decide whether this matter
20 should be stayed or not pending hearing that. And,
21 of course, it's several case law that once these
22 fees are earned, if the Supreme Court goes back and
23 only applies a retroactive application against the
24 plaintiff, that's unconstitutional. So while that
25 question is best for the court, there are some clear

1 principals regarding the constitutionality of what
2 the Supreme Court is even looking at with that
3 particular case.

4 Let me also say, Your Honor, that at the time
5 the Supreme Court case was filed, the court was made
6 aware that this lower court case was pending. The
7 Supreme Court did not take any action to stay this
8 matter because, again, it would not be an
9 appropriate move to stay this particular matter
10 because the two cases are not the same.

11 **THE COURT:** Well, was that issue before the
12 Supreme Court?

13 **MS. BROOKS:** As far as to stay the matter?

14 **THE COURT:** Yes, ma'am.

15 **MS. BROOKS:** I don't believe that the
16 defendants, who were the moving party in that
17 particular action, asked the court to stay that
18 particular matter.

19 **THE COURT:** Okay. I'm sorry. I didn't mean to
20 interrupt you.

21 **MS. BROOKS:** No, no, sir, Your Honor, that's
22 perfectly fair questions to be considered here.

23 And again, Your Honor, what we have agreed to,
24 being the plaintiff and counsel for the defendants,
25 we've agreed to a period of 120 days to finish

1 discovery because this case has been laboring. So
2 when we look at 120 days, we're going to be through
3 with discovery and this case will be ready for trial
4 at that point. That's a much smaller window than
5 the high uncertainty about when this case is going
6 to be ripe to be referred back to the Supreme Court
7 for a briefing, et cetera.

8 So, again, I would urge the Court not to impose
9 a stay because the likelihood that this case can be
10 resolved before that case is a real likelihood being
11 that we already have an agreement to finish
12 discovery in 120 days and there's just a major
13 uncertainty about how long the Supreme Court case is
14 going to take. It's certainly not going to be
15 resolved in 120 days. And, Your Honor, I would just
16 rely on the rest of my argument presented in the
17 return and the memorandum regarding reasons for this
18 Court to deny the motion for a stay at this point.

19 And, Your Honor, let me go back and just add
20 one other important thing that's a major distinction
21 in this case. One thing that the defendants have
22 sought to do by filing the Supreme Court case is to
23 go back and look at this entire timeframe, but only
24 against the plaintiff regarding these pending
25 vouchers. And when I say the entire timeframe, the

1 disciplinary action covered the years of 2006
2 through about mid to almost the latter part of 2009.
3 It is our position that based on Cruz and
4 distinguishing Archer, that the defendant should be
5 bound by the offset that the disciplinary court
6 impose as a result of that action.

7 This lawsuit here covers the same billing
8 issue, which is different from the Cruz situation.
9 This lawsuit covers the same billing issue so that
10 the question then becomes if the defendants are
11 estopped from contesting any vouchers between 2006
12 and 2009, that narrows what we're looking at here.
13 Then we have a question about the vouchers from 2009
14 to the end of August of 2012. And that issue can be
15 more easily disposed of in the lower court without
16 waiting for the Supreme Court to dispose of this
17 matter, particularly where the Supreme Court's
18 answer cannot reach that retroactively only against
19 the plaintiff.

20 **THE COURT:** Thank you, Ms. Brooks.

21 Mr. Smith, anything in reply?

22 **MR. SMITH:** Just a few things in response to
23 this. You know, again, I'm just going to make the
24 argument that it's just counterproductive in the
25 hierarchy of the court that the Supreme Court

1 ultimately rules on that issue.

2 And I understand Ms. Brooks does not agree that
3 it can go back retroactive, but what the Supreme
4 Court rules is what they rule and it's the law of
5 the State of South Carolina. And so she can go and
6 argue that in front of the Supreme Court, but she
7 can't say that it's -- that that's not an issue in
8 the lower court because it's only prospectively and
9 not retroactively.

10 You know, and, Judge, that's the whole point
11 that we're trying to make is why expend the time,
12 the money, the court resources to come and litigate
13 an issue that the court is eventually going to rule
14 upon? And if there is an inconsistent ruling
15 between the two, then we've got to come back and
16 retry the case all over again. It doesn't make
17 sense. That's why the Court is vested with that
18 equitable power to stay actions.

19 And when you -- and what she's trying to argue
20 is if you read the cases we cite, they're not
21 exactly the same as this one, conceded. I will
22 concede that. But the issue is the same. And it
23 says in there, if there's an issue in another
24 pending action that will aid the other action, then
25 you need to let that go. And that's what we're

1 asking the Court to do and not to do that.

2 One thing she mentioned is that we agreed 120
3 days to complete discovery and put this case on the
4 trial roster, that is correct, Judge. But, also, I
5 specifically told her I was not withdrawing this
6 motion to stay because, you know, the client does
7 not want to pay me to come over here and litigate
8 the issue in two places. And so, you know, their
9 opposition is just trying to get us to cool down in
10 the Supreme Court.

11 The last issue, Judge -- well, no, two more
12 issues. The other issue, she talks about the delay
13 in the Supreme Court. She is correct. We went and
14 heard motions. And a number of the motions were
15 related to issues she had. But regardless, I
16 haven't seen one e-mail from her inquiring from
17 Judge Newman as to the status of the orders. We
18 have e-mailed once, but we -- I have not had
19 anything back. So if she's in a hurry to get a
20 ruling and get this case moving, then certainly she
21 should contact Judge Newman.

22 But furthermore, Judge, is, you know, when
23 Judge Newman assumed this case, he said, we're going
24 to put this on the fast track; we're going to get it
25 moving. Then, explicably, we're stuck on some

1 ruling issue. He ruled. We've sent the orders.
2 The orders just aren't signed for some reason. And
3 so it's not like he's got anything under advisement;
4 he just hadn't signed the rules.

5 And the last thing, Judge, you know, I don't
6 want to get in a debate in In Re: Archer and In Re:
7 Brown and all that I've included in the res
8 judicata, that's what we keep going back to. And,
9 Judge, you know, the point is they can say it till
10 they're blue in the face, it doesn't make it the law
11 of the case until the court rules it's the law of
12 the case in the trial of the matter. There is no
13 mechanism for her to come before the Court and say
14 you can't ask -- you only can have prospective
15 application, you're bound by this, you know, all
16 this, you're picking on us, you know, there are
17 other people that should be held accountable to
18 this.

19 Judge, the fact of the matter is there's no
20 other people who went on a rampant overbilling of
21 the Commission of Indigent Defense other than the
22 plaintiff, and he admitted to it in a disciplinary
23 proceeding. So, you know, I don't, you know, all
24 those issues, while I understand what they're
25 saying, those are issues that have to be fleshed out

1 at the final hearing not here. And, you know, and,
2 again, I just want to point out to the Court that I
3 think the resources of the court, they're precious.
4 We hear that all the time. And there's no sense in
5 taking a day and a half of trying to answer a
6 question that the Supreme Court is ultimately going
7 to rule upon and they would be the final arbiter of
8 that question.

9 **THE COURT:** Let me look at something.

10 (Pause.)

11 **THE COURT:** Let me ask this question, Mr.
12 Smith.

13 **MR. SMITH:** Yes, sir.

14 **THE COURT:** Judge Newman's appointment as a
15 special referee, and I'm looking at the order here,
16 is that for purposes of determining the issue as to
17 what, and I've kind of looked at it from a cursory
18 standpoint, is his purpose in being appointed here
19 as a special referee simply to determine what these
20 lawyers have paid? Because it appears that several
21 subpoenas were issued and that's what the order
22 addresses on page two of the order. What is your --

23 **MR. SMITH:** Judge, what order do you -- can I
24 see the order? Because there was an order about
25 subpoenas that they issued and that may be what you

1 have. I don't know where that -- is that from my
2 brief?

3 **THE COURT:** It is. It references Exhibit D,
4 which you have interrogatories in here. And that's
5 the only order --

6 **MR. SMITH:** I have it as exhibit...

7 **MS. BROOKS:** Your Honor, if it pleases the
8 Court, I can help add an answer.

9 **MR. SMITH:** No, I can answer. I just want to
10 make sure -- before we get there, let me make sure
11 -- Judge, I gave you the wrong order and I apologize
12 for that. Let me give you the one out of my
13 notebook. I'm sorry. My paralegal did that and I
14 apologize. That's my fault.

15 And, Judge, I think what Ms. Brooks was going
16 to tell you is the same thing I'll probably tell you
17 is that -- is Judge Newman is to make factual
18 findings, and that's what that order will show, and
19 send those to the court and then the court will
20 ultimately rule upon the law.

21 **MS. BROOKS:** Your Honor, if I may just add for
22 the record, not only factual findings regarding what
23 may have been paid by attorneys to the plaintiff,
24 but also factual findings related to the whole
25 policy issue in this case also. So it's not

1 narrowly, Judge Newman's involvement is not just
2 narrowed to what other attorneys may have paid, it's
3 to develop the whole factual issue underlying this
4 particular case to include the policy of the
5 defendants regarding payment.

6 **THE COURT:** All right. Anything else on this
7 issue? Do you need this copy back, Mr. Smith?

8 **MR. SMITH:** No, sir, Judge, you have that.

9 **MS. BROOKS:** Your Honor, if I may just briefly,
10 real briefly, two distinctions about the cases that
11 the defendants rely on, the Talley case and the
12 Capital City Insurance Company case, the distinction
13 about those particular cases and why a stay was
14 either granted or upheld by the court is the nucleus
15 of the facts in both of those cases were the same.

16 Capital City was a case dealing with a workers
17 comp carrier and there was another case filed that
18 covered that exact same issue. Talley was a case
19 that covered numerous plaintiffs regarding asbestos
20 litigation. So the nucleus of the facts in both of
21 those cases were the same. We have a distinction
22 between the actual facts in this lower court case
23 and what the Supreme Court is looking to address by
24 way of original jurisdiction with their particular
25 case.

1 **THE COURT:** Let me ask this question -- without
2 going through the entire file of the plaintiff's
3 file that was filed nonjury, has anybody ever --
4 jury's not an issue in this at all; correct?

5 **MS. BROOKS:** Correct, Your Honor.

6 **THE COURT:** Let me ask this question: If the
7 matter has been appointed to Judge Newman or
8 referred to him as a special referee, is this not an
9 issue that needs to be decided by him since he's
10 been appointed? And if not, why not?

11 **MR. SMITH:** Judge, I think the lower court's
12 got to issue the stay. I mean, I don't think it's
13 up to the Supreme Court to issue the stay. Now, I'm
14 not an appellate lawyer. John Nichols is the one
15 that is handling this with me. He's co-counsel on
16 this case. And, Judge, you know, I just tell the
17 Court I've explored that and it's his opinion that's
18 to be down here and that's why I filed it.

19 **THE COURT:** Well -- and his findings of fact
20 were pertaining to the issue that's before the
21 Supreme Court.

22 **MR. SMITH:** Yes, sir, which also overlaps these
23 issues here.

24 **THE COURT:** All right. Anything else, Ms.
25 Brooks, on this issue?

1 **MS. BROOKS:** No, sir, Your Honor.

2 **THE COURT:** Anything further on this issue?

3 **MR. SMITH:** No, sir, Your Honor.

4 **THE COURT:** All right. Let me hear from you
5 now with regards to the motion -- your motion,
6 Mr. Smith, to disqualify.

7 **MR. SMITH:** Your Honor, may it please the
8 Court, in that regard, let me just -- my brief sets
9 out the issues. And, you know, I just want to point
10 out to the Court that Ms. Brooks did not appear as
11 attorney of counsel until August 5th of this year.
12 Before that, Mr. Brooks was acting pro se and I
13 certainly raised some issues with him about that,
14 but did not men -- do that.

15 I just want to say to the Court, Judge, we did
16 mediate this case. We attempted to resolve it and
17 that was kind of what the tact that Mr. Brooks and I
18 had agreed to in this case is kind of let everything
19 sit and lets go try to mediate, see if we can
20 resolve it. Then we went to the Supreme Court.
21 Then all of a sudden Ms. Brooks sent a letter over
22 to the court and tried to put her foot on the gas
23 with this case and said, you know, here I am, we're
24 ready to go. And so, you know, that's, you know,
25 thus the genesis of why we're here.

1 But regardless of that, Judge, Rule 3.7 is
2 absolutely clear on lawyers as witnesses. And, you
3 know, and, Judge, I've argued this motion.
4 Unfortunately, I've got two cases which I argued
5 motions. Judge Nettles, under the same situation,
6 removed somebody over -- representing a medical
7 malpractice case over in Florence County, Judge
8 Hyman did it over in Richland County -- I mean, over
9 in Horry County in the same situation. And judge --
10 I saw Judge Barber, when I first got this, removed
11 an attorney over here in Richland County, and I
12 couldn't find the case to refer to it.

13 But, you know, obviously, Judge, 3.7 says,
14 Lawyer as a witness, and they're not to advocate at
15 the trial unless three things: Testimony relates to
16 an uncontested issue, which it's not in this case;
17 the testimony relates to nature and value of legal
18 services, which it doesn't; and the disqualification
19 of the lawyer would work substantial hardship on the
20 client, and that's what I presume they're arguing
21 here that would work substantial hardship on the
22 client.

23 Judge, first and foremost, let me talk to you
24 about what Ms. Brooks' role is in this case, and I
25 think that's very important. And, you know, I think

1 when I read her return recently, it tried to
2 minimalize, you know, I'm not really a necessary
3 witness.

4 Judge, this isn't something -- me trying to be
5 punitive or anything. When we started discovery and
6 I attached my discovery responses, the first thing
7 we did, this was within a few months of this action
8 being litigated, I named her as a witness and I
9 listed her as a witness because she is an integral
10 part of this case. And I laid out to the Court in
11 my exhibits and the memorandum why I thought that.

12 First and foremost, Judge, she's quoted in the
13 disciplinary opinion about this case. So, you know,
14 when you go and you read the disciplinary opinion,
15 it quotes her as being -- as being, you know, part
16 of the -- he attributes some of his overbilling to
17 the fact that his wife did the work, but, you know,
18 but he billed for it. Judge, that's a major, major
19 issue on our damages is if Ms. Brooks went and
20 billed for work and then turned around and
21 Mr. Brooks claimed that that was the work, then
22 that's not an appropriate billing. That's an issue
23 of fraud that we've sued upon, that's a number of
24 issues.

25 And so it's not only that one opinion that's in

1 there, Judge. When you go back and you look at
2 this, there is also attached to the Attorney
3 General's report, and as I said, there was
4 concurrent investigations by the disciplinary
5 counsel and the Attorney General into this conduct
6 engaged in here that we're talking about, and in
7 there Mr. Brooks was interviewed and Ms. Brooks were
8 interviewed. And so both of them were interviewed.

9 And you know what they said? Exactly what was
10 in the Supreme Court opinion, My wife did a lot of
11 the work and I billed for it. And Ms. Brooks said
12 that too. And she has other areas that she talked
13 about in here which makes her a witness. Those are
14 witnesses which are crucial to us proving our
15 damages in this case that there was work done by
16 someone else that you claim was your work.

17 And so, you know, Judge, by coming in and
18 saying, now I'm going to serve as an attorney, then,
19 you know, you only get to serve one. I mean,
20 there's not, one, you get to be a witness and you
21 get to be an attorney. You only get to be one. You
22 don't -- and the Court's got to determine whether
23 you're going to be a witness or whether you're going
24 to be an attorney.

25 And for the Court to come in and say,

1 Ms. Brooks, you get to be an attorney and so you
2 don't have to testify, creates a large amount of
3 prejudice to the South Carolina Commission of
4 Indigent Defense in proving their case. And it's in
5 black and white, Judge. I mean, it's in, you know,
6 obviously we've got to get this recording from the
7 Attorney General's Office about these transcripts,
8 but they said the conduct that we complained about
9 and that we had concerns over was that.

10 And I also go back to the Court, she says it's
11 irrelevant, and I don't think it's irrelevant, but,
12 again, you know, I don't think you sit here and try
13 to determine what's relevant at this stage as
14 whether it's something that we're going to present.
15 And, you know, I hate to keep getting bogged down in
16 these relevancy and these legal issues when we're
17 here trying to talk about discovery.

18 And again, I reference the Samples v. Mitchell
19 case, Judge, says you got a broad net to cast in
20 discovery and just because it might not be
21 admissible at the later stage, doesn't preclude you
22 from exploring that. And that's what I -- and
23 that's my whole concern here is if she's an
24 attorney, then I can't take her deposition. She
25 says, oh, you can take my deposition and I'm going

1 to be a witness in that, that's not what the rules
2 allow. The rules don't allow you to be both of
3 them. You are either an advocate or you're a
4 witness. And you read the comments and that's what
5 it says. You can't mix the two of them together.

6 And so, you know, I do not agree that she needs
7 to be an attorney and she needs to be a witness,
8 that creates an awkward position for me as an
9 attorney. And it allows, you know, Judge, you know
10 it when you see pro se people up there, they're
11 arguing and they're testifying, they're incongruent.
12 Who's going to make the objections if she's a
13 witness? She's going to say, oh, I object to that
14 question, and then we're going to have to argue as a
15 witness with that. That's the whole point of it.
16 And, Judge, you know, quite frankly, I mean, you
17 know, there's no case law on this because exactly
18 this does not occur in South Carolina, I would
19 submit, and, you know, if you want -- as evidenced
20 by these rules.

21 But regardless, Judge, the last thing I would
22 point out, if you want to know the breadth of her
23 involvement in the overbilling and the misbillings
24 of the Commission of Indigent Defense, look at the
25 submission that I have of his time that he claims

1 was there, you know, when he redistributed his time
2 to say, oh, this is how I arrived at a figure that
3 they claim we should be bound by, and he's got Irma
4 listed on there, which is Ms. Brooks. And he's got
5 her listed on there for \$5,000 of billing, I presume
6 that's what it is, of billing that's -- that was not
7 even -- that he billed under his name.

8 So, you know, again, Judge, that's the point
9 that we're making. We're not trying to be punitive
10 to her. She just came to this case. She's been
11 listed as a witness since inception of the case.
12 She was referenced in this action. The records, the
13 discovery's replete with her conduct being involved
14 in this. I mean, you know, for all -- we can allege
15 there is a conspiracy. I mean, we could go back and
16 name her, Judge, if we wanted to. I mean, we may do
17 that if that's what we're going to get into here,
18 you know, because once we got these reports, now we
19 see that they worked in conjunction with one another
20 in overbilling the CID.

21 So, you know, those are the issues, Judge. I'm
22 not trying to be punitive. We were forthright.
23 This has been there since the beginning that she's
24 going to be a witness and she can't trump us being a
25 witness by saying, now I'm going to be a lawyer, or

1 try to say, I'll act as both. The rules don't let
2 you act as both. The hardship on a client means
3 whether you get to continue, but it doesn't mean you
4 get to testify. And so, you know, that's the point
5 we have with this, Judge.

6 You know, the last thing, and again, you know,
7 the Court knows and I mean, you know, and the same
8 goes for Mr. Brooks, and, you know, that's the
9 problem with being an attorney and being pro se, the
10 rules just do not allow you to do that. And, you
11 know, that's an unfortunate byproduct of being a
12 member of the Bar. You don't get to be able to
13 serve as a pro se litigant and as a lawyer. You
14 can't do it.

15 And so, Judge, you know, again, those two
16 cases, and I know they're not binding on the Court,
17 but, you know, one was a medical malpractice case
18 that Judge Nettles removed the personal
19 representative. She was a personal representative
20 and she was an attorney. He said, You can't act
21 both these roles. And all the law is quoted in my
22 memorandum that Judge Nettles found. And the same
23 was a legal malpractice action against an attorney
24 over in Horry County and Judge Hymen found the same
25 thing. You're acting pro se, but you cannot

1 represent yourself. You've got to go get an
2 attorney.

3 And I'm not doing this to try to be difficult
4 on them, but, Judge, you know, I've got an
5 obligation to represent my clients. We've got an
6 obligation not to confuse these roles. And they've
7 got an obligation to follow the rules of
8 professional conduct and that's 3.7. So we ask that
9 Ms. Brooks be removed as well as Mr. Brooks.

10 **THE COURT:** All right. Ms. Brooks, happy to
11 hear from you.

12 **MS. BROOKS:** Thank you, Your Honor. May it
13 please the Court.

14 There is so much there to discuss with you and
15 first and foremost would be the fact that Mr. Smith
16 said, you know, here in August, I just pop up on the
17 case. Well, when the Supreme Court issue was filed
18 more than a year and a half ago back in January or
19 so of 2013, I am the attorney of record for the
20 respondent, Mr. Brooks, in that matter. So this is
21 not something that as of August of this year, I just
22 inserted myself. I've been involved in this case
23 for a significant time prior to that.

24 Also, Your Honor, Mr. Smith indicates that the
25 public reprimand from the disciplinary action quotes

1 that a lot of the work was completed by myself
2 regarding the overbilling that Mr. Brooks faced and
3 fully adjudicated in that particular proceeding.
4 Well, what the order actually says is, Under the
5 facts presented in that order, respondent further
6 explains that some work was reported under his name
7 when it was actually performed by his wife, another
8 attorney in his firm. That's the only sentence in
9 that order about anything regarding Irma Brooks as
10 attorney.

11 And I would further submit to you that when
12 Mr. Smith relied on the spreadsheets that he's
13 talking about and it's indicating \$5,000 that would
14 be attributed to myself for legal work, well, Your
15 Honor, we have \$50,000 plus regarding pending
16 vouchers here. And out of the -- there's actually
17 170 vouchers in this lower court case involving
18 payment that the plaintiff is seeking for his legal
19 representation of indigent persons. My involvement
20 in those vouchers would be less than two percent out
21 of that whole 170.

22 Now, again, the factual issues, Mr. Smith
23 freely shared with you, you know, this case is
24 replete with overbilling that Ms. Brooks may have
25 done. There's been no disciplinary referral of

1 myself regarding this issue. The defendants also
2 referred this case to the Office of Attorney
3 General. The Attorney General's Office did not make
4 a recommendation for any criminal prosecution of
5 myself for any overbilling issues or criminal action
6 against the plaintiff in this case for overbilling.
7 So those facts about this case is replete with all
8 of that, that's not established.

9 I will also point out to you, Your Honor, that
10 the one big case that -- or situation that Mr. Smith
11 relies on is a billing issue regarding an indigent
12 client, Ms. Janice Cooper, that was a family court
13 matter. Well, what we have in that case is a valid
14 order from the family court awarding me attorney
15 fees for my representation of that particular
16 client. The case was a TPR that was successfully
17 appealed. And what's happened is the defendants
18 have objected to paying a voucher on that, but they
19 have stalled that process. So we have no factual
20 determination regarding any wrongdoing of
21 overbilling on my part.

22 When you also look at Rule 3.7, Rule 3.7 does
23 allow an attorney to act as an advocate and as legal
24 counsel in a case. In this case, clearly, we don't
25 have a jury issue. When we don't -- most of those

1 cases that require the attorney to select one or the
2 other role or either other attorneys in the firm to
3 select one or the other role is usually when the
4 matter is before a jury. And you do have confusion
5 issues regarding a jury when you see the attorney as
6 a witness and you see the attorney as an advocate.
7 That's not the case with this particular situation.
8 This is clearly a nonjury matter that's going to be
9 heard before a judge and we don't have those
10 confusion issues.

11 **THE COURT:** Let me ask you this, Ms. Brooks:
12 In his memo, he cites Rule 3.7. And he refers the
13 Court to comment to Rule 3.7, which says that the
14 opposing party has a proper objection whether a
15 combination of roles may, may prejudice that
16 parties' rights in the litigation.

17 And I certainly respect your argument, but
18 please convey to the Court the legal standpoint how
19 your continued representation, he's relying upon,
20 Mr. Smith, and correct me if I'm wrong here, but in
21 the broad rules of discovery, you're arguing facts
22 to me against, you know, your involvement or prior
23 involvement in billing discrepancies, that's what
24 you're arguing to me here, but from his standpoint
25 what he has argued here, that they have a right to

1 investigate, to depose, to make these
2 determinations, to flesh out so to speak these
3 issues relating to the causes of action by your --
4 by Mr. Brooks, as well as their counterclaims,
5 explain to me, if you would, how you continuing in
6 your representation as lawyer and serving as a
7 potential witness would not prejudice them in
8 fleshing these out.

9 **MS. BROOKS:** Your Honor, what I would submit to
10 the Court is again what they're relying on as a big
11 overarching reason for them wanting to either depose
12 or enter into whatever discovery mechanism to obtain
13 more information from me is actually larger than
14 what they're purporting it to be.

15 With the facts, let me go back and say, Your
16 Honor, at one point in this litigation, Mr. Brooks
17 was represented by Ms. Desa Ballard. And then at
18 that -- and at a point where finances were no longer
19 available because these vouchers have not been paid,
20 Ms. Ballard is no longer on the case. Mr. Brooks
21 did proceed for some period of time pro se and then
22 hence now my involvement.

23 But, Your Honor, going back to your question,
24 what they are indicating is that they need to depose
25 me. Well, that one deposition of me is small in the

1 mass number of other discovery mechanisms that have
2 to occur here. And Mr. Brooks would be at a
3 substantial hardship to not have me, his attorney of
4 choice, as his counsel in this particular matter.
5 They -- by them deposing me or developing whatever
6 information they feel like they need to develop to
7 help establish a defense for their case, can also be
8 done along with me also representing the rights of
9 Mr. Brooks regarding the rest of this case.

10 I'm not the only witness that they need to
11 depose in this particular case. There's other
12 witnesses. And so that limited role should not
13 disqualify me from representing Mr. Brooks in this
14 matter.

15 And, in fact, to disqualify me, would enact a
16 greater financial hardship on Mr. Brooks. There is
17 not an option where we can go and retain another
18 attorney. I also know this case better than anybody
19 else for having been in it for the length of time
20 that I've been in it. And, again, the position that
21 they're asserting, unfounded facts, regarding
22 anything regarding overbilling on my part is a
23 larger issue that they're looming to disqualify me.

24 Now, Your Honor, let me say, in the Supreme
25 Court matter, we had this same issue come up where I

1 was seeking to disqualify Mr. Smith and Mr. Nichols
2 because they actually are more substantially
3 involved in the policy aspect of payment and we were
4 not able to resolve that issue and I withdrew my
5 motion.

6 But one thing that was made clear is if we go
7 back and look at that transcript, I remember
8 distinctly Mr. Smith saying we can -- we can operate
9 in this case as both the attorney of record and then
10 if you need to seek discovery, either discovery by
11 getting information from us or other attorneys. In
12 this particular situation with Mr. Brooks in the law
13 firm, there's not another attorney, if I am
14 disqualified, that can come in and represent him.

15 Now, should he be forced to only proceed pro se
16 in this, that's not his desire. I am his attorney
17 of choice for this particular matter. And the
18 limited scope that they need to inquire of me is
19 much smaller compared to the other 170 vouchers and
20 billing issues and policy issues. And I submit to
21 the Court that the two can exist together.

22 Matter of fact, the other part of Rule 3.7
23 indicates that -- excuse me for one second -- the
24 other part of that rules says, A lawyer may act as
25 advocate in a trial in which another lawyer in the

1 lawyer's firm is likely to be called as a witness
2 unless precluded from doing so by Rule 1.7 or Rule
3 1.9.

4 Now, Your Honor, Mr. Smith has indicated that
5 he's provided case law to you that will be of
6 precedential effect regarding this. Well, that's
7 not true. The cases that he referred to are not
8 even reported cases. Those are cases that he has
9 some involvement in and knew, on some litigation
10 level, the judge may have disqualified an attorney.
11 That's not a reported case. That's not something
12 that this Court can rely on for authority. It's
13 clear that --

14 **MR. SMITH:** Judge, I have to contradict her --

15 **THE COURT:** Hold on a minute. I'll come back
16 to you.

17 Go ahead and finish what you were saying.

18 **MS. BROOKS:** That's not something that this
19 case can rely on as authority that the practice of
20 either an attorney representing him or herself pro
21 se is just simply barred. In the two cases that
22 Mr. Smith mentioned, those are very different cases.
23 The attorney as personal representative in a probate
24 matter, well, we don't know all the facts. Was that
25 being challenged by other potential beneficiaries in

1 that case? The other case with the malpractice
2 issue is different from this particular issue.

3 And also, Your Honor, the Collins case that
4 Mr. Smith relies on for authority, well, the
5 information about the attorney as witness, the
6 information that they quoted in their memorandum
7 actually comes from the dissent in that case and the
8 dissent in looking at whether the attorney in a
9 particular firm could have also represented the
10 client. And so, you know, this case does not stand
11 for the proposition that the attorney cannot also
12 serve as advocate and counsel. That's not what the
13 Collins case is about.

14 And, in fact, the Collins case is different
15 because there was another attorney in that case that
16 the court concluded the attorney could step in and
17 represent the client and the other attorney in the
18 firm could serve as a witness in that particular
19 case. But, again, you know, we're a firm of either
20 Mr. Brooks or myself, so we don't have someone else
21 to step in in that regard.

22 **THE COURT:** All right. Mr. Smith.

23 **MR. SMITH:** Judge, sorry to interrupt, I wanted
24 to point out that I specifically told the Court that
25 wasn't precedential. So when she said, I said it

1 was precedential, that's not correct. So I wanted
2 to point that out.

3 Judge, let me just go back to two issues: A,
4 she is absolutely correct in that we did not move to
5 exclude her in the Supreme Court and that shows you
6 that there's no maliciousness or any trying to gain
7 an advantage because she has no facts that, in the
8 Supreme Court opinion, that where she would have to
9 be a witness. We specifically said we don't have
10 any concern with you there because you don't have --
11 you're not going to be a witness to this narrow
12 issue that the Supreme Court has accepted in its
13 original jurisdiction just as we don't have any
14 information in that regard. And so that's why we
15 had it, Judge.

16 And then, you know, specifically when you come
17 down here, she does have information. And the Court
18 rightly points out the prejudice. And she wants to
19 minimize it, Judge, but, you know, I hate to say it,
20 it can't be minimized in this situation.

21 When you look in that opinion, Mr. Brooks says
22 his wife -- has billed some under his wife. But
23 moreover when you start reading into the Attorney
24 General transcript, let me make sure that the Court
25 understands what we're talking about here, is that,

1 you know, there was -- he billed 12 -- let's see --
2 on 156 days, he billed more than 12 hours. On 35
3 days, he billed more than 20 hours. On 13 separate
4 days, he billed more than 24 hours. And one day he
5 billed 35 and one day he billed 40 hours. And,
6 Judge, read the transcript that was provided by
7 Mr. Brooks. Well, that's because my wife did some
8 of the billing and she got included into the case.
9 That's his excuse.

10 And, Judge, you know, we have the right -- that
11 is our -- that is part and parcel of our
12 counterclaim. We sued him for fraud. We sued him
13 for conversion. We sued him for Unfair Trade
14 Practices Act. And his defense is, Well, all these
15 times were just miscalculations and billing entries,
16 and some of this my wife did. And so, you know,
17 Judge, I don't -- that's the point is, you know,
18 while she may think it's minimal, that goes to the
19 heart of our case against them.

20 And, you know, now we're starting to find out
21 it looks like that this just wasn't, you know, one
22 isolated incident. I mean, you look, there's \$5,000
23 worth of work at \$40 an hour, that's a fair amount
24 of hours that was billed by Ms. Brooks. We're not
25 claiming she overbilled. We're not claiming she did

1 any, you know, that. What we're claiming is that
2 she worked a file and it was represented to the
3 payor that Mr. Brooks worked the file.

4 Judge, that's problematic under a number of
5 levels. And so, you know, and that's part and
6 parcel of our claim, which, you know, what we're
7 saying is not only do you owe us that money, you owe
8 us consequential damages, you owe us punitive
9 damages and maybe even treble damages and attorney's
10 fees if it's found that you violated that. And so
11 they want to minimize that. There's no minimization
12 to that issue. And so that's the whole point,
13 Judge. I think it's highly prejudicial to us and to
14 our counterclaim to do that.

15 **THE COURT:** Let me ask you this, Mr. Smith:
16 Will there be any difference in the application of
17 Rule 3.7 with the matter being tried nonjury as
18 opposed to jury?

19 **MR. SMITH:** No, sir. It's not -- I mean, the
20 rule's a rule, Judge. And, you know, and I
21 understand what she's saying is that, you know, the
22 judge can sort it out. It's not only the judge
23 sorting it out, it's the attorneys sorting it out.

24 And, Judge, you know, I hate to go back to
25 this, but let me just point out, you know, that one

1 of the reasons why the motion was filed is we took
2 the deposition of one of the pro se attorneys and
3 she started saying, That's not relevant; I'm not
4 answering that question. And we had to go back to
5 the jud -- how do we resolve fights in depositions
6 in discovery with a witness who's also the lawyer?
7 I mean, that's why we have this rule, Judge. You
8 can't wear these two hats.

9 And so, you know, again, you know, I understand
10 -- I understand what her point is, but, you know,
11 it's -- there's a rule, it was adopted by the
12 Supreme Court, and there's logic and reason behind
13 it. It's to exactly prevent what she's trying to
14 accomplish here.

15 **THE COURT:** Anything further on this matter,
16 Mr. Smith?

17 **MR. SMITH:** No, sir.

18 **THE COURT:** Anything further, Ms. Brooks?

19 **MS. BROOKS:** Just very briefly, Your Honor.

20 **THE COURT:** Briefly.

21 **MS. BROOKS:** Briefly. Thank you, Your Honor.

22 Your Honor, on this whole issue about the
23 billing, that is a relitigation of what happened in
24 the disciplinary action that Mr. Smith is trying to
25 reopen. And he says I am minimizing it. And it

1 would be my position that they are maximizing what
2 they seek to inquire regarding the particular
3 information there.

4 And, Your Honor, what we have not dealt with as
5 much is the substantial hardship that it would be to
6 leave Mr. Brooks without attorney of choice in this
7 particular matter. That particular factor is in
8 there for a reason and I would just urge the Court
9 to consider that regarding this particular motion.

10 **THE COURT:** Okay. Thank you, ma'am.

11 All right. Last and finally, the motion to
12 compel.

13 **MR. SMITH:** Judge, let me just point out, and I
14 told Ms. Brooks yesterday, she filed a return -- or
15 Monday, Tuesday, whenever we came up here -- she
16 filed a return --

17 **THE COURT:** Is that what --

18 **MR. SMITH:** Yes, sir.

19 **MS. BROOKS:** Yes, Your Honor.

20 **MR. SMITH:** And I told her I was going to go
21 and look at it, and what we could try to resolve, we
22 will resolve, but I'd want some court assistance.
23 Judge, I just absolutely did not have time
24 yesterday. I had to get ready for this appellate
25 court argument and you forget about how much you

1 forget about cases after two years of pending in the
2 appeals courts.

3 So, you know, I'll -- just a couple issues, I
4 guess, we're going to have to resolve and I just
5 have not had time to read her response. And maybe
6 they can get it resolved here, Judge, or the Court
7 will say, look, y'all, go out and try to resolve
8 this and come back.

9 There are some issues we're going to need Court
10 assistance on, but I don't -- she's trying to at
11 least start responding to some of these that were
12 not responded to originally, so however the Court
13 wants to handle that.

14 **THE COURT:** Do you want to continue this matter
15 here today to give you an opportunity to review
16 what's been provided?

17 **MR. SMITH:** Yes, sir. I mean, I know we're
18 going to have to come back on one issue, but if that
19 suits the Court, because there's going to be issues
20 when she's going to get up and I'll say, Judge,
21 that's fine. And I don't want to waste the Court's
22 time, whatever the Court wants to do.

23 **THE COURT:** Well, what I will do rather than --
24 I'll continue the motion to compel so you don't have
25 to -- neither one of you have to turn around and

1 file another motion for \$25. I'll continue that for
2 it not to be put back on the roster until notified
3 by one of the attorneys, whether it be Ms. Brooks or
4 Mr. Smith on that issue. And if you resolve it
5 without the necessity for the court action on a
6 motion to compel, please advise the clerk's office
7 so they can do whatever.

8 All right. I'll look at this. I've read the
9 material Mr. Smith previously forwarded to me. And
10 I will read what has been submitted by Ms. Brooks,
11 and I will let you all know.

12 **MR. SMITH:** Judge, can I ask you one question
13 about the discovery, please?

14 **THE COURT:** Yes, sir.

15 **MR. SMITH:** If we're not able to resolve it,
16 and what I would propose, Ms. Brooks and I get
17 together by mid next week, either let the Court know
18 if we don't resolve it or not. I just -- any way
19 you can help us to accelerate the time --

20 **THE COURT:** Do this, let Jim's office know
21 within ten days whether or not it's been resolved.
22 If it has been resolved, you can strike it. If not,
23 get it on the next nonjury roster to be dealt with.

24 **MR. SMITH:** Thank you.

25 **THE COURT:** Now, that would also play in the

1 part of what my ruling is on the disqualification
2 issue. If I disqualify, then I'm going to give them
3 a certain amount of time to obtain further counsel
4 and proceed that way.

5 **MR. SMITH:** Yes, sir. And I'll certainly --
6 we'll respect that if that happens, Judge, and then
7 obviously I know I've got to wait until they get
8 other counsel.

9 **MS. BROOKS:** I'm sorry, Your Honor, just one
10 other thing. In the motion to disqualify, part of
11 that also was Mr. Smith's position to disqualify
12 Mr. Brooks also from pro se representation. We
13 didn't really argue that. And I didn't know if he
14 is still maintaining that particular position and is
15 that something you're taking under consideration
16 also?

17 **THE COURT:** I mean, he hit on that. I mean, he
18 argued it kind of part and parcel, at least that's
19 the way I took it, as to each of you because -- if
20 you're witnesses in a case. If you want to add
21 anything further on that, I'll certainly allow you
22 to do that, but that was the way I took his
23 argument.

24 **MS. BROOKS:** And I would just add the further
25 substantial hardship should that occur for

1 Mr. Brooks not to even be allowed to represent
2 himself in this matter should the disqualification
3 of myself become necessary.

4 **THE COURT:** All right. Very well. Thank you
5 all.

6 **MS. BROOKS:** Thank you, Your Honor.

7 **MR. SMITH:** Judge, thank you for accommodating
8 us.

9 **THE COURT:** Yes, sir.

10 Let me ask this question before you all leave,
11 Mr. Smith, Ms. Brooks: If I stay the matter pending
12 the ruling by the Supreme Court, and I just want to
13 make this clear for the record and what your
14 proposal was, was that discovery continue along,
15 that just the trial not go forward until the Supreme
16 Court issue that?

17 **MR. SMITH:** Yes, sir. So we don't have to
18 litigate that, that's correct. And I think the
19 Court inquired also as to whether -- kind of put a
20 halt to the discovery on that issue too so not to
21 create the burden and expense on that issue.

22 **THE COURT:** Okay. All right. Very well.
23 Thank you very much.

24 **MS. BROOKS:** Thank you, Your Honor.

25 **MR. SMITH:** Thank you, Judge.

C E R T I F I C A T E

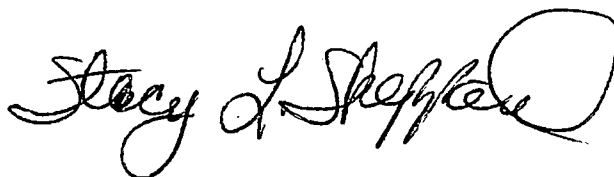
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 9th of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 6, 2015



Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Charles Thomas Brooks, III,

Plaintiff,

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

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION # 2012-CP-40-07200

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO STAY AND
DEFENDANTS' MOTION TO
DISQUALIFY PLAINTIFF'S COUNSEL

20th NOV - AM 10:17
RICHLAND COUNTY
JANET L. W. MCBRIDE
CLERK, S.C.

The Defendants' Motion for Disqualification of Plaintiff's Counsel and Defendants' Motion to Stay, the South Carolina Commission on Indigent Defense (herein after referred to as "SCCID") and South Carolina Office of Indigent Defense (herein after referred to as "SCOID") submit this Memorandum of Law and exhibits attached hereto, in support of their Motions. Your Defendants would respectfully request this Court grant the Motion to Disqualify the Plaintiff's Counsel and grant the Motion to Stay this Action Pending a Ruling by the South Carolina Supreme Court on the issue they have assumed in their Original Jurisdiction.

FACTS

The Plaintiff devoted a substantial portion of his practice to representing indigents in post-conviction relief cases, Department of Social Services cases, and sexually violent predator actions. The Plaintiff also represented indigent defendants in criminal cases and probation revocations.

On or about September 1, 2009, T. Patton Adams, IV, acting in his capacity as the Executive Director of the SCCID, filed a complaint against the Plaintiff with the Office of Disciplinary Counsel alleging that Plaintiff had overbilled certain vouchers from a period of October 2006 through September 2009.

SCCID transitioned from a paper voucher system to an electronic voucher system during these dates. This allowed SCCID to correlate billing records of attorneys from different cases. Their system determined that there were approximately one hundred and fifty-six (156) days in

which the Plaintiff billed more than twelve (12) hours; thirty-five (35) separate days in which the billing total was more than twenty (20) hours, on thirteen (13) separate days in which the billing total was more than twenty-four (24) hours in a day, including one (1) day of almost thirty-five (35) hours and one (1) day of almost forty-one (41) hours.

On or about December 9, 2009, Plaintiff through counsel, asked SCCID to cease payment on the vouchers that continued to be submitted while a determination could be made regarding any overbilling that may have occurred. Thus, SCCID did not pay any invoices on or after December 1, 2009 until after this action was commenced.

The Office of Disciplinary Counsel (herein after referred to as "ODC") and the Plaintiff entered into an agreement that the Plaintiff received excess compensation from SCCID in the amount of \$61,826.40. The disciplinary opinion of the South Carolina Supreme Court stated "due to the lack of contemporaneous time records, an exact figure for excess billing and excess payments received cannot be established. However, after reviewing the record in detail with the assistance of his counsel and a forensic accountant, Respondent calculates he received \$61,826.40 in excess compensation from SCCID." SCCID was never consulted nor agreed to this figure. This was a figure calculated by the Plaintiff and/or his attorney's office and agreed to by ODC. By opinion dated August 1, 2012, the South Carolina Supreme Court issued a Public Reprimand of the Plaintiff and ordered that he make restitution to SCCID for the excess compensation he received by asking him to reduce the fees owed to him by \$61,826.40 and enter into a re-payment plan if the amount owed to him was insufficient to satisfy his debt to SCCID. If the amount Plaintiff owed SCCID is insufficient to satisfy his debt, Plaintiff was to submit a re-payment plan for the balance owed to SCCID to SCCID within thirty (30) days of the date of the Opinion. (Opinion is attached hereto and incorporated herein by reference as Exhibit A).

Of note in the Public Reprimand were the explanations of the Plaintiff for his overbilling.

The Opinion stated "when it was time to submit a voucher, Respondent and his staff often relied on his client's file to determine the amount of time he had devoted to that particular client. Respondent submits this approach resulted in him sometimes incorrectly attributing work to the wrong dates and over estimating the time devoted to a particular task. It also caused him to sometimes bill for the same travel time more than once because the underlying cases were concluded at different times and did not keep track of whether he had already billed travel for a particular day. Additionally, Respondent billed for items SCCID does not consider compensable, namely work performed by paralegal staff and particular travel time. Respondent further explains that some work was reported under his name which was actually performed by his wife, another attorney in his firm."

Contemporaneously while the ODC investigation was occurring, the South Carolina Attorney General's Office, through their assigned investigator of the South Carolina Law Enforcement Division, was investigating the Plaintiff for possible criminal conduct. This investigation was conducted by Robert H. W. Cathey, Special Investigator of the South Carolina Attorney General's Office. (A copy of which is attached hereto and incorporated herein as referenced as Exhibit B)

As a part of that investigation, the Plaintiff was interviewed as well as the current attorney for Plaintiff (who is also Plaintiff's wife). In page 14 of Exhibit B (Attorney General's investigation), the Plaintiff advised some of the time submitted under his name was for work that was performed by his wife (now his attorney in this action). In essence, that was part of his excuse as to why there was time in excess of twenty-four (24) hours a day. Furthermore, the Plaintiff's wife, Irma R. Brooks (attorney in this action) was also interviewed by Robert H.W. Cathey as part of the Attorney General's investigation. Again, Irma R. Brooks confirmed that she performed work on files and billed under Charles Brooks' name. She also stated "if they

worked a case jointly, they both reviewed the vouchers for correctness." (Exhibit B, page 21, paragraph 3). Ultimately, the Attorney General's Office, upon information and belief, decided that they could not prove any criminal activity beyond a reasonable doubt and declined to prosecute the case. They closed their file in this matter.

On or about August 27, 2012, Plaintiff's counsel at that time, Desa Ballard, arranged a meeting with SCCID to resolve the restitution issue. The Plaintiff calculated that he was owed \$110,522.85 in vouchers that had been submitted since the investigation into his overbilling. The Plaintiff demanded that the amount be offset with \$61,826.40 for payment of \$48,696.45.

When the Plaintiff requested payment as described above, SCCID raised the issue of the Plaintiff being compensated by other attorneys to assume representation. The Plaintiff advertised and solicited his services of representing indigents in exchange for a fee from the original appointed attorney. When SCCID stated that his vouchers were to be offset by that amount pursuant to their policies and guidelines, the Plaintiff's attorney at that time stated that the issue was irrelevant. The Plaintiff took the position that those fees were not to be used to offset the amounts billed to SCCID.

Thereafter, the Plaintiff commenced this action on August 28, 2012 alleging that the Plaintiff was entitled to declaratory judgment and injunctive relief that he was owed \$48,696.45. He also alleged he was entitled to damages for conversion and bad faith as well as attorney's fees pursuant to S.C. Code Ann. §15-77-300. Your Defendants denied the Plaintiff's relief requested and asserted a number of counterclaims.

The Plaintiff also filed a motion with the Court to require SCCID to escrow the funds he alleged were owed to him. The parties appeared before the Honorable James R. Barber, III on January 14, 2013 in which he denied that relief.

At that hearing, SCCID alleged, among other reasons, that they did not owe the amount

claimed by the Plaintiff due to the fact that he had been paid by other attorneys to assume indigent representation and had not accounted for the same on the vouchers. In support of this legal position, your Defendants submitted an Affidavit of their expert, Nathan M. Crystal. Professor Crystal opined that it would ethically improper under Rules of Professional Conduct 1.5 A and 8.4 E for the Plaintiff to receive compensation for his services to indigents from SCCID without deduction for payments he received from the originally appointed counsel. (A copy of said Affidavit attached hereto and incorporated herein as Exhibit C).

After the commencement of the action, the parties exchanged discovery responses (SCCID maintains that the Plaintiff's responses are insufficient and a Motion to Compel is pending before the Court scheduled to be heard on October 7, 2014). In the responses to the Plaintiff's Interrogatories dated December 11, 2012, your Defendants identified the Plaintiff's wife, Irma R. Brooks as a witness in this matter.

After numerous legal wranglings over the relevancy of attorney's payments to the Plaintiff for assumption of indigent representation, the Defendants, SCCID, petitioned the South Carolina Supreme Court in its original jurisdiction to determine five (5) issues. Mainly, a declaration that payments a substitute counsel receives from the originally appointed counsel for assuming representation or payments received "on Defendant's behalf" so that they must be disclosed and accounted for in an application for payment from the Office of Indigent Defense.

Over the Plaintiff's objection, the South Carolina Supreme Court by Order dated October 4, 2013 accepted the Petition in its original jurisdiction. It accepted a declaratory judgment in its original jurisdiction to determine the narrow issue of "whether payments made by an attorney appointed to represent an indigent client to substitute counsel or payments received in 'on Defendant's behalf', such that payments must be disclosed and accounted for voucher submitted to petitioners for repayment.

The South Carolina Supreme Court also appointed the Honorable Clifton Newman as a special referee to issue a report containing proposed findings of facts and recommendations to this Court pursuant to S.C. Code Ann. §14-3-340(1976). (A copy of said Order is attached hereto and incorporated herein by reference at Exhibit D).

This matter is currently pending before Judge Newman and as to date, he has not scheduled a hearing to make his findings of fact and recommendations to the Supreme Court.

On June 27, 2014, SCCID filed a Motion to Stay this Action pending a ruling by the Supreme Court on the issue in its original jurisdiction. SCCID filed this Motion alleging that a key issue in this matter was whether the payment to the Plaintiff for representation in indigent cases had to be accounted and offset from fees paid by SCCID in connection with the Plaintiff's indigent representation. This matter is pending before the Court and the non-jury roster in the Court of Common Pleas. Conceivably, the Court of Common Pleas could hear this matter and reach an inconsistent ruling which could result in Appeal. Ultimately, the Appellate Courts would have to rule upon that issue. It is not a valuable use of Court resources to have this issue decided when it is currently pending before the South Carolina Supreme Court in its original jurisdiction.

The Plaintiff was originally represented by Desa Ballard in this matter. By Order of the Honorable L. Casey Manning dated February 19, 2013, Desa Ballard and Harvey M. Watson, III were relieved as counsel. The Plaintiff was then representing himself pro se.

On August 5, 2014, the Plaintiff's attorney, Irma R. Brooks forwarded a letter dated August 5, 2014 stating that she was filing a Notice of Appearance as attorney of record in this matter.

Your Defendants thereafter filed the Motion dated August 18, 2014 moving to disqualify counsel since she was also a witness in this matter. SCCID further moved to disqualify the

Plaintiff from representing himself in this matter under the same theory.

**PLAINTIFF AND PLAINTIFF'S ATTORNEY SHOULD BE DISQUALIFIED AS
ATTORNEY OF RECORD IN THIS MATTER**

Pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct entitled "Lawyer as a Witness", the Defendants moves for an Order disqualify the Plaintiff's attorney, Irma R. Brooks or the Plaintiff from acting as an attorney in this matter. This is because both Irma R. Brooks and the Plaintiff Charles T. Brooks, III are necessary witnesses and will testify at the trial of this matter. Due to the dual role of attorney and witness, your Defendants contend that their rights in this litigation will be prejudiced.

Rule 3.7 "Lawyer as a Witness" states that

(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless:

1. The testimony relates to an uncontested issue;
2. The testimony relates to the nature and value of legal services rendered in this case;
3. Disqualification of the lawyer would work substantial hardship on the client.

Rule 407, SCACR.

Of particular significance is a comment to Rule 3.7 which notes that the opposing party has a proper objection whether a combination of roles may prejudice that parties' 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 as an analysis of proof.

407, SCACR. See also State v. Sanders, 337 S.C. 368, 523 S.E.2d 187 (Court App.

1999).

In Collins Entertainment v. White, 363 S.C. 546, S 611 S.E.2d 262 (Court 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 a fact witness in the case. In 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." In reason "the roles of an advocate and 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, 661, S.E.2d at 271 see also Lot v. Westinghouse Savannah Rivers Co. Inc. 200 F.R.D. 539, 548-49 (D.S.C. 2000) (quoting Spivey v. United States, 912 F.2d 80, 84th Cir. 1990)) (providing "in so far as an Affidavit of Counsel may attempt to introduce substantive evidence, it is elementary that counsel may not participate as both an advocate and a witness, absence special circumstances").

The 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 thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of a 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/her 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 the witness is to state the facts objectively... When the testimony of the attorney aides his client, a jury may view an attorney as possessing special knowledge of a case and therefore accord a

testifying attorney's arguments undo weight in.' McArthur 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 F. Supp. 226, 229 (D.S.C. 1988).

As examples of prejudice resulting from Irma R. Brooks acting as an attorney and as a necessary witness at the trial, the Defendants submit the opinion of the South Carolina Supreme Court in reprimanding the Plaintiff. The Supreme Court specifically noted in the agreement with ODC that the Respondent further explains that some work was reported under his name when it was actually performed by his wife. This assertion in and of itself causes Irma R. Brooks to be a necessary witness. SCCID has counterclaimed against the Plaintiff alleging among other causes of action that the Plaintiff was guilty of conversion and fraud. The Plaintiff's defense to this is partially that the work was actually performed although it was not performed under his name. Your Defendants should have the ability to depose and call as a witness Irma R. Brooks. It would be inherently unfair to allow her to be precluded as a witness to the Defendants since she is acting as an attorney. Your Defendants assert that she is a necessary witness for full and proper adjudication of the facts in this matter.

To further demonstrate the need to call Irma R. Brooks as a witness in this matter, your Defendants reference page fourteen (14) of the Attorney General's investigative report. In there, the Plaintiff's interview states that Irma R. Brooks worked in his office and was doing a fair amount of DSS work that were his indigent defense cases. This was all an allegation to justify that the time should be compensable although it was not performed by the Plaintiff. Again, your

Defendants are entitled to explore those assertions, and they are material in the Plaintiff's case of defeating the causes of action alleged against him and alternatively to the Defendants being able to defend the allegations made by the Plaintiff.

Your Defendants would further reference a spreadsheet provided by the Plaintiff's office which is attached hereto and incorporated herein by reference as Exhibit F. In that spreadsheet, the Plaintiff re-allocates time in which the overbilling occurred. In this re-allocation, there is a column entitled "Irma". This allocates payments to Irma R. Brooks which again the Plaintiff is claiming is owed to him. If your Defendants are precluded from being able to explore the actual work performed by Irma R. Brooks, then it would prejudice their rights in defending this case as well as prosecuting their counterclaims.

Your Defendants would also show that this matter of overbilling by the Plaintiff was initially discovered as a result of Irma R. Brooks' participation in an Appeal involving Janice Cooper. When SCCID obtained the brief to companion Appeals of Janice Cooper and Stanley Epps from a DSS case, they noticed the briefs were exactly the same. Despite them being almost duplicate briefs, there were individual vouchers for separate preparation of the briefs by the Plaintiff and his wife, Irma R. Brooks. Therefore, your Defendants are informed and believe that Irma R. Brooks has special knowledge of the facts and circumstances which would assist in the prosecution of their counterclaims. Therefore, they listed Irma R. Brooks as a witness in this matter before her appearing as counsel in this matter.

Furthermore, your Defendants are informed and believe that the Plaintiff should also be precluded from representing himself in this matter. While your Defendants understand the difficulty such a ruling can cause, the Plaintiff is in the unique position of being an attorney and *pro se* litigant. The Plaintiff is bound by the Rule of Professional Conduct. Namely, Rule 3.7 which precludes a lawyer acting as a witness.

While it is understood that the Plaintiff is going to claim that disqualification would work substantial hardship on the client, your Defendants would show that the comments to Rule 3.7 note the unique conflict created when a lawyer acts as both a witness and an advocate. The fact that the lawyer is also the *pro se* litigant does not preclude his removal. Your Defendants submit that Rule 3.7 does not contemplate lawyers representing themselves as litigants. Your Defendants would offer that there have been two (2) cases in which similar situations have existed. While your Defendants admit that this is not binding upon the Court, they would submit in two (2) actions that other Circuit Court Judges have determined that attorneys cannot represent themselves in actions. See Celeste Brunson as Personal Representative of the Estate of Ruth B. Tilly, Deceased v. Tuomey Regional Medical Center, et al. Civil Action Number 2006-CP-43-2164 (Judge Nettles disqualified the Personal Representative who was also an attorney for continuing in the representation of the estate); Tracy Edge v. Hatley Law Firm, LLC and Chad B. Hatley individually Civil Action Number 2009-CP-26-984 (Judge Hyman disqualified Plaintiff from representing himself in a legal malpractice action).

Your Defendants would request that the Court also disqualify Charles T. Brooks, III from representing himself in this matter and require him to retain the services of an attorney so that your Defendants will not be prejudiced in the defense of their case or the prosecution of their counterclaims.

MOTION TO STAY

Your Defendants have requested the Court stay this action pending a ruling by the South Carolina Supreme Court as to "whether payments made by an attorney appointed to represent an indigent client to substitute counsel or payments received 'on Defendant's behalf', such that payments must be disclosed and accounted for and vouchers submitted to the Petitioners for re-payment."

As provided herein above this action is a dispute as to what money, if any, is owed to the Plaintiff for indigent representation after the offset for amounts that were overbilled from 2006 through 2009. Central to this dispute is whether the Plaintiff is required to account for monies that were paid by other attorneys in assuming representation of indigent defendants. Your Defendants allege that they are aware of at least \$20,000.00 of payments from other attorneys to the Plaintiff. This money should be offset from any invoices submitted for reimbursement to your Defendants. The Plaintiff takes the opposite view that the money is not connected in the representation and should not be accounted on the voucher. Furthermore, the Plaintiff takes the position that your Defendants' policy did not require disclosure and deduction of that money until it changed after the filing of this action.

The Circuit Court has broad discretion as to supervision over the progression and disposition of a case in the interest of justice and judicial economy. Capital City Ins. Co. v. BP Staff, Inc., 382, S.C. 92, 674 S.E.2d 524 (2009). The general rule in South Carolina case law has acknowledged a case may be stayed in the event that the resolution of another pending case might resolve the stayed case. Rush v. Thompson, 203 S.C. 106, 26 S.E.2d 411 (1943) (denying motion to consolidate actions filed at law and in equity on same facts but staying later filed equitable action pending resolution of law action.); See Also Tucker v. Tucker, 264 S.C. 172, 213, S.E.2d 588 (1975) (finding Circuit Court could not entertain action to replace a personal representative where a case had already been initiated in the Probate Court).

The resolution of the Supreme Court action in answering the contested issue of whether payments received by other attorneys on Defendants' behalf should be disclosed and accounted for in the vouchers submitted will resolve a major issue in this underlying Common Pleas action. To not stay the Common Pleas action could produce an inconsistent ruling by the Circuit Court while the same is under consideration by the Supreme Court.

In the interest of judicial economy and justice, it simply makes sense to allow the Supreme Court to rule upon its issue that it has in its original jurisdiction before proceeding in the Common Pleas action. Otherwise, there will be substantial evidence submitted to the Court on that consideration which will ultimately be ruled upon by the Supreme Court. Stays have been previously employed to permit resolution of a controlling issue in another pending proceeding, and are often used to postpone proceedings in one case pending the outcome of proceedings in another case. S.C. Juris. §40,41. The Supreme Court's pending ruling as to "whether payments made by an attorney appointed to represent an indigent client to substitute counsel or payments received 'on Defendant's behalf', such that payments must be disclosed and accounted for and vouchers submitted to the Petitioners for re-payment" is certainly a controlling issue with respect to this action. When there is an identity of parties and subject matter in an action at law and an action at equity, the pendency of one may call for a stay of the proceedings in the other. S.C. Juris. §41. Your Defendants have retained an expert to provide opinion as to the issue that is under consideration by the Supreme Court. Likewise, your Defendants presume that the Plaintiff will eventually produce experts and/or witnesses that state their interpretation is to the contrary of your Defendants assertions. This will require numerous witnesses and precious court time devoted to a matter that is eventually going to be ruled upon by the Supreme Court. Therefore, your Defendants are informed and believe that the Court should stay this matter.

The Court has discretion to grant a stay in a matter pending before the Court. See Talley v. John-Mansville Sales Corp., 285 S.C. 117, 119, 328 S.E.2d 621, 623 (1985). "[T]he duration of the stay must be determined under the facts of each individual case." Id. at N.1. Courts have considered the following factors in whether to exercise their discretion to stay a filed action; convenience of parties and witnesses; damage; hardship or inequity to either party; and the likelihood of a prompt disposition of the first filed case. 1(A) C.J.S. Actions §249(a). Here, the

Supreme Court action, extensive discovery, and expert witnesses, are factors weighing in favor of the convenience of the parties and witnesses and minimizing hardship to all parties.

As in the Capital Ins. Co. case, the Court found that the trial court seeking to withhold determination of a Circuit Court case pending resolution of administrative proceeding that may impact the Circuit Court case should properly consider a stay or a continuance to the judicial action until the administrative proceedings have concluded. This is exactly the situation in this Common Pleas action. Your Defendants would submit that the Court should issue a stay pending resolution of this issue by the Supreme Court. Otherwise, the parties will expend great sums of money to conduct discovery and litigate an issue that will soon be determined by the South Carolina Supreme Court.

CONCLUSION

For the forgoing reasons, the Defendants, the South Carolina Commission on Indigent Defense and the South Carolina Office of Indigent Defense request that the Court disqualify counsel for the Plaintiff as well as the *pro se* Plaintiff from representing themselves and require the Plaintiff to retain the services of an attorney. Furthermore, your Defendants request that the Court stay this action pending the resolution of the action pending before the South Carolina Supreme Court in its original jurisdiction.

Respectfully submitted.

LEE, ERTER, WILSON, HOLLER & SMITH,
L.L.C.

G. MURRELL SMITH, JR.

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October 31, 2014.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF
COMMON PLEAS

Charles Thomas Brooks, III)
)
Plaintiff,)

Civil Action No.: 2012-CP-40-07200

v.)

MEMORANDUM

South Carolina Commission on)
Indigent Defense, and the Office of)
Indigent Defense.)
)
Defendants.)

RICHLAND COUNTY
FILED
2014 OCT -9 PM 2:37
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**MEMORANDUM IN OPPOSITION
TO DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISQUALIFY COUNSEL**

The Plaintiff objects to and opposes the Defendants' Notice of Motion and Motion to Disqualify Counsel based on grounds listed below.

Defendants move to disqualify myself, Attorney Irma R. Brooks, as counsel for the Plaintiff based on the assertion that I am a material witness and there is the intent to depose me regarding allegations of over-billing by the Plaintiff. Defendants further move to disqualify the Plaintiff, Mr. Charles T. Brooks, III, from representing himself Pro Se in this matter since he is an integral witness and expected to testify in this matter.

The Motion to Disqualify Counsel should be denied based on the following grounds:

LAWSUIT BACKGROUND ALLEGATIONS:

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.

DISQUALIFICATION AS TO IRMA R. BROOKS:

The Defendants seek to move for disqualification of the Plaintiff's counsel of choice by alleging that an isolated case that Irma R. Brooks handled was the initiating trigger for the "over-billing" practice of the Plaintiff. The Plaintiff is informed and believes that the alleged ground propounded by the Defendants regarding the disqualification of Irma R. Brooks is not supported by any judicial determination of "improper billing" and is a part of the retaliatory actions taken by the Defendants, particularly Attorney Hugh Ryan, General Counsel for the Defendants, to deny proper payment to the Plaintiff's law firm for the representation of an indigent client.

Irma R. Brooks represented Ms. Janice Cooper in a highly contested and contentious family court action regarding the termination of parental rights of her children. The case was appealed to the South Carolina Court of Appeals and successfully argued on behalf of Ms. Cooper. The case resulted in a reported decision in which Ms. Cooper prevailed and the termination of parental rights as to her children was reversed.

As the conclusion of the that phase of the case, Irma R. Brooks submitted a billing statement to the family court judge for the work expended on behalf of Ms. Cooper. The family court properly reviewed the matter and signed an order granting funds to Irma R. Brooks for the representation of the indigent client in this case. The unpaid voucher for the representation of Ms. Cooper, an indigent client, has been pending since 2009.

The Defendants, through Mr. Ryan, referred the Plaintiff's matter of "over-billing" to the Office of Disciplinary Counsel. The Plaintiff is informed and believes the Defendants did not refer the

case of billing regarding the indigent representation of Ms. Cooper to the Office of Disciplinary Counsel. However, the matter was referred by the Defendants and/or Mr. Ryan to criminal investigation through the Attorney General's Office. No criminal charges were filed. Further, the Plaintiff and Irma R. Brooks were informed that the billing request for the representation of Ms. Cooper, an indigent client, would be disposed of after the disciplinary matter was concluded. Certainly, any referral for disciplinary action now would be retaliatory.

After the conclusion of the disciplinary action, Irma R. Brooks made a payment request to the Defendants for the legal fees earned for the representation of Ms. Cooper. The Defendants refused and rejected any payment for the legal fees earned to represent this indigent client. Further, the Defendants filed an untimely Motion for Reconsideration of the family court order that granted approval of the legal fees earned for the indigent representation of Ms. Cooper. The court order awarding the legal fees to Irma R. Brooks for the representation of Ms. Cooper, an indigent client, is a valid court order and has not been otherwise reversed or amended, especially since the Defendants have purposefully sought to not have the matter heard so that payment could continue to be denied. The Plaintiff is informed and believes the Defendants should not be allowed to use "loose allegations" from the Cooper case as a reason for a major conflict as to why Irma R. Brooks cannot serve as the Plaintiff's counsel of choice in this matter, especially when the Defendants have delayed and refused a court hearing to dispose of the billing issues in the Cooper case.

The Plaintiff is informed and believes the Defendants have purposefully failed and refused to schedule a hearing in the billing matter of Ms. Cooper for the indigent representation of her case,

all in an effort to retaliate against the Plaintiff as a part of the Defendants' displeasure, particularly Mr. Ryan's displeasure, of the disciplinary result. Specifically, the Plaintiff is informed and believes that since the disciplinary action concluded without a disbarment of the Plaintiff, Mr. Ryan has taken a course of action to negatively impact the payment of legal fees to the Plaintiff, all without proper legal justification. The Plaintiff is informed and believes, as to each and every of the ten (10) matters listed below, that the Defendants and/or Mr. Ryan have/has taken the following actions to negatively impact the payment of legal fees to the Plaintiff for the representation of indigent clients and cause a severe financial burden on the Plaintiff:

- (1) During the disciplinary proceeding and investigation, Mr. Ryan refused to provide requested information to the Office of Disciplinary Counsel that specifically impacted the matter of "over-billing", the subject of the disciplinary proceeding;
- (2) While the Office of Disciplinary Counsel was investigating the "over-billing" allegations against the Plaintiff, the Defendants through Mr. Ryan, referred the same "over-billing" matter to the Office of the Attorney General for possible criminal action;
- (3) After the release of the disciplinary order, Mr. Ryan took special effort to the report the decision to the media;
- (4) The Defendants refused to acknowledge and abide by the adjudicated offset and reimbursement determined by the disciplinary action, particularly when the Defendants actively participated in the disciplinary investigation;
- (5) After the disciplinary proceeding, when the Plaintiff presented a demand for payment of the pending and unpaid vouchers submitted for the representation of indigent

clients, the Defendants, particularly through Mr. Ryan, alleged a false long standing policy of deducting money received from an attorney to another attorney to be substituted on a Rule 608 case as a "fee paid on behalf of the defendant [or indigent client]", thus requiring a further adjustment of the legal fees sought to be paid to the Plaintiff;

- (6) After the filing of this lawsuit, the Defendants made a change to their payment policy to reflect the above referenced change, yet presented it as a long standing policy of the agency, all in an effort to further refuse payment to the Plaintiff for legal fees earned for the representation of indigent clients;
- (7) The Defendants have refused payment regarding the legal representation of Ms. Cooper, an indigent client, and have further refused to schedule and dispose of their Motion to Reconsider the valid court order granting an award of legal fees for such representation;
- (8) After the filing of this lawsuit, the Defendants filed a declaratory judgment action in the South Carolina Supreme Court falsely asserting a long standing policy of accounting for funds paid by an attorney to another attorney for Rule 608 substitution as funds paid "on behalf of a defendant" thereby reducing any fees owed for indigent representation to the substituted counsel [such a policy violates 1.8 of the Rules of Professional Conduct; and any determination by the South Carolina Supreme Court can only be prospective in application];
- (9) The Defendants have failed to honor the payment request of the Plaintiff for the legal representation of indigent clients that fall outside of this lawsuit; and

- (10) The Defendants have implemented a problematic and flawed contract system for the appointment of Rule 608 cases to further prevent the Plaintiff from handling a high number of such cases, which serves to undermine the representation of indigent clients.

The Plaintiff is informed and believes that now the Defendants are seeking to disqualify the counsel of choice, Irma R. Brooks, for the Plaintiff to further negatively impact the course of this litigation and financially hamper the Plaintiff from successfully presenting this case.

The Defendants rely on Rule 3.7 of Rule 407, SCACR, as generally prohibiting a lawyer from acting as an advocate at a trial in which the lawyer will be a necessary witness. In *Hagood v. Summerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the court examined the parameters of Rule 3.7 noting:

“Nothing in Rule 3.7 or the accompanying comments indicates it is intended to prohibit an employee of an attorney from testifying in a case handled by the attorney in which there exists no conflict of interest between the attorney and client, or between the attorney’s employee and client. Jurors are not likely to be confused by a lawyer’s employee testifying as a witness for a client while the lawyer serves as the client’s advocate. Jurors should readily perceive the distinction [.]” *Id.* at ____, 607 S.E.2d at ____.

Rule 3.7 of Rule 407, SCACR, addresses situations in which a lawyer may testify as a witness. The rule provides that if “disqualification of the lawyer would work substantial hardship on the client”, the lawyer may testify as a witness. The rule further provides “a lawyer may act as advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness

unless precluded from doing so by Rule 1.7 or Rule 1.9 [which addresses conflicts of interest with clients or former clients].”

The present case is less complicated and even more straight forward as to the advocate and counsel issue. First, this is not a jury matter, so the confusion factor does not exist as to counsel serving as advocate also. The one billing matter involving that of Ms. Cooper is not comparable to the other 169 vouchers included and pending in this lawsuit. Disqualification is an extraordinary measure that would cause further substantial hardship to the Plaintiff. In addition, the granting of this motion to disqualify the Plaintiff's counsel of choice would allow the Defendants to exact another financial hardship on the Plaintiff, in addition to not making proper payment for the legal services rendered unto indigent clients. For all of the foregoing reasons, the Defendants' Motion to Disqualify Counsel, particularly Irma R. Brooks, should be denied.

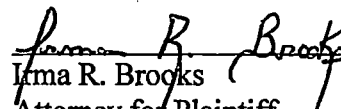
DISQUALIFICATION AS TO THE PLAINTIFF'S PRO SE REPRESENTATION:

The Plaintiff repeats all of the foregoing argument here as if repeated verbatim. The Plaintiff is a party opponent in this matter. If the court disqualifies the Plaintiff's counsel of choice, that would leave the Plaintiff with no option but to represent himself in this matter. There is no precedential authority, in a civil case, to disallow pro se representation. To allow such disqualification here would be to allow the Defendants to exact a significant and severe financial burden on the Plaintiff and impact the mode of this trial. Such a denial of a substantial right, right to counsel of choice, is immediately appealable, thereby adding further delay and cost of this case.

For all of the foregoing reasons, the Defendants' Motion to Disqualify Counsel, particularly the Plaintiff proceeding Pro Se if necessary, should be denied.

Based on the foregoing reasons, the Plaintiff now respectfully asks this Honorable Court to fully deny the Defendants' Motion to Disqualify Counsel in all respects and to grant any other appropriate and necessary relief at this time.

RESPECTFULLY SUBMITTED,



Irma R. Brooks
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October 8, 2014

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

In the Matter of Charles Thomas Brooks, III,
Respondent.

Appellate Case No. 2012-212138

Opinion No. 27151

Submitted July 2, 2012 – Filed August 1, 2012

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Sabrina
C. Todd, Assistant Disciplinary Counsel, both of
Columbia, for Office of Disciplinary Counsel.

Harvey MacLure Watson, III, of Ballard Watson
Weissenstein, of West Columbia, for Charles Thomas
Brooks, III.

PER CURIAM: In this attorney disciplinary matter, the Office of Disciplinary Counsel and respondent have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand. Respondent agrees to make restitution to the South Carolina Commission on Indigent Defense (SCCID) for the excess compensation he received by asking it to reduce the fees it currently owes to him by \$61,826.40. Respondent agrees that, within thirty (30) days of imposition of a sanction, he will provide the Commission on Lawyer Conduct (the Commission) with documentation from SCCID that the request has been made and will satisfy his debt to SCCID. If the amount respondent is owed by SCCID is insufficient to satisfy his debt, respondent agrees to submit a repayment plan for the balance

A

owed to the Commission within thirty (30) days of the imposition of discipline. Respondent further agrees to complete the Legal Ethics and Practice Program Ethics School within one (1) year of imposition of discipline and he agrees to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission within thirty (30) days of imposition of discipline. We accept the Agreement and issue a public reprimand with conditions as stated hereafter. The facts, as set forth in the Agreement, are as follows.

Facts

A substantial portion of respondent's practice has been devoted to representing indigents in post-conviction relief, Department of Social Services, and sexually violent predator actions. Respondent also represents indigents in criminal cases and probation revocations.

The executive director of the SCCID filed a complaint against respondent alleging he overbilled SCCID for his representation of indigents. For most of his appointed work, respondent would submit vouchers at the conclusion of his representation on each case. Respondent's vouchers served as itemized billing records for each individual case indicating time and dates for the work performed.

During a time period covering approximately two (2) years and eight (8) months, respondent's vouchers to the SCCID contained numerous errors. In fact, when respondent's billing records for that period were later totaled by date rather than viewed as separate vouchers, the calculations revealed that respondent billed SCCID in excess of 24 hours per day for fourteen separate days.

Respondent admits he substantially overbilled for his representation of indigent clients and acknowledges systemic problems with his billing practices. Chief among these problems was respondent's failure to maintain contemporaneous time records in his indigent cases. When it was time to submit a voucher, respondent and his staff often relied on his client's file to determine the amount of time he had devoted to that particular client. Respondent submits this approach resulted in him sometimes incorrectly attributing work to the wrong dates and overestimating the time devoted to a particular task. It also caused him to sometimes bill for the same travel time more than once because the underlying cases were concluded at different time and he did not keep track of whether he had already billed travel time for a particular day. Additionally, respondent billed for items SCCID does not consider compensable, namely worked performed by paralegal staff and particular travel time. Respondent further explains that some work was reported

under his name when it was actually performed by his wife, another attorney in his firm. Despite these admitted problems, respondent contends he did not intentionally overbill SCCID and ODC does not have any evidence to the contrary.

Due to the lack of contemporaneous time records, an exact figure for excess billing and excess payments received cannot be established. However, after reviewing the records in detail with the assistance of his counsel and a forensic accountant, respondent calculates he received \$61,826.40 in excess compensation from SCCID.

Respondent has continued to represent indigent clients and submit vouchers for his work but, pursuant to his requests, SCCID has not paid him for his services since ODC began its investigation. Because of the additional vouchers submitted during the investigation, respondent represents that SCCID owes him more on approved, unpaid vouchers than he received in excess compensation.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.5(a) (lawyer shall not charge or collect an unreasonable fee or an unreasonable amount for expenses) and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).

Conclusion

We find respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.

Respondent shall make restitution to 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. Within thirty (30) days of the date of this opinion, respondent shall provide the Commission with documentation from SCCID that his request has been made and that it will satisfy his debt to SCCID. If the amount respondent

is owed by SCCID is insufficient to satisfy his debt, respondent shall submit a repayment plan for the balance owed to SCCID to the Commission within thirty (30) days of the date of this opinion.

Respondent shall complete the Legal Ethics and Practice Program Ethics School within one (1) year of the date of this opinion and provide the Commission with proof of completion no later than ten (10) days after the conclusion of the program. Finally, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission within thirty (30) days of the date of this opinion.

PUBLIC REPRIMAND.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

November 23, 2010

INVESTIGATIVE REPORT

TO: South Carolina Attorney General's Office
FROM: Robert H. W. Cathey, Special Investigator
RE: Charles T. Brooks, III

Introduction

A preliminary investigation regarding this matter was initiated based upon a request from the South Carolina Commission on Indigent Defense, 1330 Lady St., Suite 401, P.O. Box 11433, Columbia, SC 29211, telephone (803) 734-1338, regarding potential over billing by Attorney Charles T. Brooks, III of Sumter, SC, via his submission of vouchers for reimbursement of time and expenses for the defense of indigent clients.

Synopsis

This matter was assigned for preliminary criminal investigation based upon the referral by Hugh Ryan, General Counsel, South Carolina Commission on Indigent Defense, of concerns regarding their printout of the total hours charged by Attorney Charles Brooks as of October 9, 2009. These records reflect that from June 26, 2007 through December 16, 2008 there were seventeen (17) days in which over 24 work hours for each day was submitted on vouchers, which Brooks alleged was for work he completed for indigent defendants. There were also approximately 156 days where 12 work hours or more for each day were submitted on vouchers for indigent defendants.

Preliminary Investigation

At the outset of the preliminary investigation Ryan L. Cole, Data Specialist, South Carolina Commission on Indigent Defense (SCCID), provided a printout entitled "Charles Brooks Hours Per Day 10-9-09 Update" which listed all of the vouchers submitted by Brooks' office from January 1, 1900 thru September 17, 2009 and also provided the printout entitled "Charles T. Brooks Vouchers That Include Days Over 24 Hours" listing the voucher numbers, the sum of the fees paid, along with a computer printout entitled "Charles T. Brooks Vouchers That Include Only Days Over 12 Hours and Under 24 Hours" also setting out the voucher number (CID III) and the total sum of fees paid.

Throughout the conduct of this inquiry, Cole provided several computer printouts, including one of May 28, 2010 entitled "Charles T. Brooks Original Changes To All" in an 8 ½ X 14 printout for "Charles T. Brooks Days With Activities Exceeding 23.5 Hours Sorted by Client Name, Docket and Warrant" in alphabetical order, along with a printout of 150 days entitled "Charles T. Brooks

Days With Activities Exceeding 12 Hours Sorted by Client Name, Docket and Warrant" which was also in date order and then alphabetically by client name, which includes the docket number, warrant number, SCCID number, voucher number, activity, out of court and in court hours as well as the total hours. An additional listing is entitled "Days Over 24 Hours. Excludes Created by L. Frost. 10-9-09 Update. List created 2-19-10" and a spreadsheet "Charles T. Brooks Time Sheet (Over 23.5 Hours Only) Data as of 10-9-09, Vouchers created by L. Frost removed 4-2-10" (13 pages). Various Additional documents were received from SCCID on February 25, 2010 and succeeding dates which were used during the course of this preliminary investigation in an attempt to determine if any vouchers were improperly submitted by Brooks to SCCID for payment of fees for Brooks' representation of indigent defendants. (Attachment #1)

Various correspondences were reviewed during this inquiry, including correspondence from General Counsel Hugh Ryan to Brooks questioning the validity of vouchers on attachments A & B, an October 2, 2009 letter from Brooks to General Counsel Hugh Ryan acknowledging receipt of that letter and that Brooks was reviewing his files and acknowledging that he discovered problems with some time sheets. An October 5, 2009 letter from Brooks to General Counsel Ryan advising that he had spent the weekend reviewing the vouchers noted on exhibits A & B of Ryan's prior correspondence, noting that he found problems and corrected them on the vouchers and requested that the time sheets be unlocked on the computer in order for him to make the corrections. Brooks additionally requested that SCCID delay payment for those vouchers until Brooks reviewed them and asked to be allowed to resubmit previously paid vouchers to off set payments for the vouchers under review for monies that he should not have received. An October 6, 2009 letter from T. Patton Adams, Esq., Executive Director, SCCID, to Leslie Caggiola, Office of Disciplinary Counsel, advising Caggiola of days Brooks resubmitted 12 or more hours for a given date, referencing their correspondence to Brooks concerning these questions and correspondence from Brooks noting that Brooks noted errors on the vouchers and his request for SCCID to unlock the vouchers so he could submit amended time sheets. An October 5, 2010 letter from Attorney Desa Ballard to General Counsel Ryan advising that she represents Brooks and requesting additional reports regarding vouchers submitted by Brooks. An October 7, 2009 correspondence from General Counsel Ryan referencing Brooks' letter of October 5, 2009 and advising that the matters listed in exhibit A are under investigation and have been forwarded to the Office of Disciplinary Counsel. A December 9, 2009 letter from Attorney Ballard to General Counsel Ryan concluding, in part, that there are entries that were either billed on the incorrect day or done by someone else and billed inadvertently under Mr. Brooks' number and a request to discuss a restitution plan with SCCID. April 26, 2010 letter from Attorney Harvey Watson of Attorney Desa Ballard's office referencing correspondence between Attorney Ballard and Senior Assistant Attorney General Creighton Waters regarding the conduct of this inquiry. (Attachment #2)

On January 11, 2010, employees of the SCCID were interviewed, including Ryan Cole, Data Base Specialist, who reviewed the entire data base regarding Brooks' voucher submissions and, based on that review, determined that, on approximately 156 days, Brooks billed more than 12 hours of work for each day. There are approximately 35 days in which Brooks billed more than 20 hours of work each day and 13 days in which that billing total was more than 24 hours in a day, including

\$184k

one day of almost 35 hours and one day of almost 41 hours. The data base discloses that approximately \$184,545.26 was billed to SCCID via Brooks' vouchers in excess of billings for a 12 hour or less work day. Cole provided a booklet of 296 pages detailing by date all of the vouchers submitted by Brooks and explained, as an example, the calculation of hours charged as 0.6 as 6/10 of 60 minutes or 36 min. and 1.2 as one hour and 2/10 of an hour, which would be 12 minutes and .65 as .65 of an hour which is 39 minutes, as well as 3.5 as 3 hours 30 minutes. Cole further explained the internet log-on process wherein vouchers are entered into the computer system and he provided a copy of the front and back of a blank voucher form which sets out "payment of fees and expenses of appointed counsel for indigent representation in criminal cases" and sets out the items which will be paid, which will not be paid and the procedure for seeking payment. Prior to the automated system, attorneys were required to fill out individual vouchers wherein these procedures were contained on the back of the voucher. The submission of a voucher, via the automated system, contains an electronic signature authorization which reflects, in part, "by submitting this voucher, I certify that the information herein is true and correct to the best of my knowledge, that the services for which I am requesting payment were actually performed by me or another person and no payments, other than those indicated herein, by or on behalf of my client were made to me for representation in this matter".

certify

SCCID staff, including Jean Tinder, Administrative Coordinator I for Non-Capital Cases, Sexually Violent Predators and Post Conviction Relief; Laurie Frost, Administrative Coordinator I for Family Court Cases and DSS Cases; and Gail Westfall, Administrative Specialist, advised that they review online voucher submissions to determine if vouchers are properly prepared and if the request for fees appears to fall within the items which will be paid. If questions arise as to the appropriateness of the number of hours claimed for the activity conducted, they contact the claimant via e-mail and advise as to what documentation is needed, any concerns and request additional information to substantiate the request for payment. Normally an amount is agreed to with the claimant and SCCID "unlocks" the voucher for the claimant to correct and resubmit the voucher. The on-line voucher system was implemented in October 2006 and any cases that were already opened were not required to have time sheets and vouchers submitted on-line. Subsequent vouchers were required to be submitted on-line. Frost contacted Brooks' office via the e-mail address provided by Brooks when questions arose regarding time sheets and vouchers submitted by his office. SCCID provided copies of e-mails between Westfall and Judy McCool, Legal Assistant for Brooks' office for the period Sept. 4, 2008 thru Aug. 5, 2009. E-mails were also provided between SCCID employee Frost and Brooks during the period Aug. 8, 2007 thru Sept. 9, 2009. The above referenced e-mails are primarily concerned with the receipt or non-receipt of court orders and documents for cases in which Brooks submitted vouchers for payment.

Review emails

Tinder, et. al, referenced situations in which previously filed vouchers could be "unlocked" in order that Brooks' office could make changes to the submitted vouchers and, in some cases, changes to vouchers were made by SCCID personnel. SCCID staff commented that Brooks' vouchers submitted in 2009 appeared to be based on work which had not been completed at the time of the submission of the voucher. It appeared to SCCID personnel and administrative coordinators that Brooks' office was submitting vouchers for work that he had not accomplished and was basing

changes by OP

work in advance

the number of hours submitted for new cases on old cases which SCCID referred to as "cutting and pasting" for billing. - cut and paste → same hours

One of the above referenced e-mails dated Dec. 10, 2009 was from Beth Mathias to Donna Brooks at SCCID and referenced a Dept. of Revenue (DOR) tax levy dated Aug. 4, 2009 for \$6,906.22 against Brooks and DOR took two payments, one on 8-12-09 for \$2,683 and the other on Aug. 26, 2009 for \$4,062 for a total of \$6,745 from Brooks' voucher filings and remanded it to DOR leaving a remaining balance of \$161.22 owed by Brooks. DOR wrote the \$161.22 off because Brooks called her several times advising that he was going to pay but did not. DOR
levy

*Ryan
consequence* General Counsel Ryan advised he had prior conversations with Brooks regarding his vouchers and SCCID's concern regarding his 12 plus hour work days and some of the days in excess of 24 hours and provided copies of correspondence between SCCID and Brooks regarding those concerns. (Attachment #3)

On January 14, 2010, Judith L. McCool, Paralegal, employed by Charles Brooks, was interviewed and advised that she was hired in December 1999 by Brooks to work part-time in his office conducting real estate closings. McCool's duties included sending out correspondence on cases, contacting clients, making copies, when necessary, and other duties as assigned, including the preparation of vouchers for Brooks' indigent defense work. Approximately 50% of the legal work done by the Brooks' Law Firm involved indigent clients and the remaining 50% involves paying clients. McCool primarily handles post conviction relief (PCR) cases for indigent persons. Brooks does most of the work himself on private or appointed criminal cases, which may include some indigent parties. McCool does not know the percentage of indigent cases worked by Brooks. McCool believes that 10% to 15% of those clients are indigent and McCool works primarily on non-indigent cases. 50/5

Brooks' wife, Irma Brooks, is also an attorney and works mostly out of the Brooks' home in Columbia but occasionally asks office personnel to help her. That help usually consists of scheduling appointments because she has no office staff. McCool identified other employees, past and present, as being Tina Jenkins, who worked in the office as a paralegal; Sondra Ludd, who worked in the office in 2003; Sherry Charles, who worked in 2005; and Dion Deese. The office staff at the current time includes herself and Jo-Ball, who does response letters to the clients, answers the telephone, schedules appointments and does the clerical work for the office. McCool has been the longest employee in the office and started out doing real estate closings. In 1999, Jenkins was working in the office with McCool and Jenkins did most of the time sheets and voucher preparation to be submitted to SCCID. McCool began helping Jenkins with vouchers up until approximately 2003. Ludd began working in the office around May 2003 and helped Brooks with vouchers on PCR and criminal cases. During 2003, there was a real estate boom and McCool did not do any work with vouchers again until around late 2007. Around late 2005, Jenkins left the office right after Ludd left. Ludd was fired due to a bad attitude in dealing with clients. In 2005, Brooks hired Charles to do Family Court work, including DSS vouchers and also hired Dion Deese, who may have also done vouchers. McCool worked in the back office so she was not aware of what the employees up front Irma

were working on. Charles was in the Air Force and, around late 2006 or early 2007, Charles and Deese left Brooks' office and Jenkins returned to work. Jenkins did vouchers and Charles subsequently came back to work at Brooks' office approximately 2 or 3 months later. Her job was to do vouchers. Charles worked until approximately Aug. or Sep. 2007 when she went on active duty in the Air Force. After Charles left, SCCID OID vouchers were evenly divided between Jenkins and McCool. Around Aug. 2009, Jenkins left Brooks' employment and went to work with the US Marshal's Service in Columbia. In Sept. 2009, McCool took over approximately 98% of the SCCID voucher work and Ball did about 2% of the vouchers.

Brooks explained to McCool how to format time sheets and vouchers and told her to go, through the closed case files, put everything in chronological order and prepare a chronological list of activities, including the time charged to each activity. Brooks wrote notes on messages, sticky notes, etc., and on the front of the file regarding hearing dates, etc., and the time he spent on those hearings. McCool did not know some of the files existed until Brooks gave them to her. McCool first wrote the information on a legal pad in chronological order and then prepared vouchers based on that information. McCool used the Office of Indigent Defense (OID) CID form 100 dated 11-94 to account for the time charged to each case and to file the vouchers with OID. McCool typed the OID time sheet, entering the date, activity and the assigned time for correspondence, orders, faxes, etc., based on how long it took her to do those things. McCool also took the time from the file where Brooks had noted it or what Brooks told her as she prepared the file in chronological order. Sometimes Brooks wrote the time on slips of paper in the file or noted the time in court on the folder. In 2003, McCool and the staff also noted the times and appointments, etc., for clients and kept it on the office computer calender also noting the time clients spent with Brooks. *act*
act
write
fun
assign
time
on the
time

After compilation of the information in the file, McCool placed the completed time sheet, attached to the file, on a table for Brooks' review. Brooks reviewed the file, made notations or signed the box on the voucher and returned it to McCool. If corrections were noted by Brooks, McCool made them and retyped the time sheet. McCool highlighted the type of case noted on the voucher form, attached it to the file and placed it on a table for Brooks' review. McCool included the old time sheet with the corrections noted, along with the new time sheet with the file. Brooks again reviewed the file, signed the time sheet and returned it to McCool and she typed the voucher, sometimes with Brooks' help. The time sheet was attached to the voucher and other forms such as the order appointing Brooks to the case, along with the final order and sent it to the trial judge for approval and signature. When the vouchers and forms were returned they were sent to the Clerk of Court for signature to certify the voucher and the vouchers were subsequently submitted to OID. *paper*
Sign
review

When OID vouchers first became automated, Charles was handling all the vouchers and in late 2007, McCool began doing the vouchers and had to learn how to do them on-line. McCool still completed a file review and put everything in the file in chronological order but did not have to prepare that information on a legal pad since she could enter it in the computer. OID required the times to be in tenths of an hour rather than point .05, etc. McCool either knew what the time was to be charged for the activity or Brooks noted the time or McCool left it blank. If McCool left it blank, it would be entered as 0.0. McCool highlighted any questioned times so Brooks could tell her *on line*

knew the time before

the correct time. Once the file, with corrections was received from Brooks, McCool corrected the time based on what Brooks told her and printed out a completed time sheet which was given to Brooks for his review and signature. After Brooks' signature, McCool completed the voucher online.

In PCR cases, if more than \$1,000 was claimed on the voucher it required additional substantiation. If the amount was around \$1,050 Brooks told McCool not to worry about it and just enter \$1,000. McCool advised that it was cheaper to take \$1,000 than to have to do all the paperwork for the extra charges. No signature was necessary to submit the voucher online and the time sheet went along with the voucher. McCool considered that the time sheet was the actual time that had been worked on the case. Neither Brooks nor the trial court saw the voucher again.

-sumter
false
log.

If OID personnel had questions, they called the office or e-mailed the office and McCool spoke to Brooks and obtained the correct time. Afterwards, McCool asked OID to unlock the voucher so she could access the time sheet, change the time, and resubmit the voucher. She printed out a copy of the new time sheet and voucher and put it in the case file.

case file

Most of the closed files subsequent to 1999 are kept in the office and older files are kept in a storage unit, which McCool believes is located at Sumter Self Storage on Broad St.

McCool believes that Brooks did time sheets on occasion. She is not sure how other employees completed time sheets but she completed them the way she was taught by Jenkins. Jenkins primarily taught McCool how to do time sheets and, at the time, Jenkins was doing all of the DSS cases and their required time sheets and vouchers. McCool remembered that vouchers Jenkins completed were always sent along with the time sheets to Brooks for checking and correcting, if necessary, just as McCool did. Time sheets and vouchers McCool assisted Mrs. Brooks with were returned to her and certified by Mrs. Brooks and then were sent to OID.

McCool opens the office mail and knows that checks come from OID, however, she does not handle the office money and forwards those checks to Brooks. McCool is paid hourly and does not receive any pay based on the number or amount of OID vouchers submitted and there are no bonuses paid in the office.

McCool reviewed the SCCID booklet containing policies and procedures for the submission of time sheets and vouchers and noted that they are the same forms she printed out from the SCCID website when she began doing time sheets and vouchers. If McCool did not know the answer to a question, she either looked it up or called OID. McCool had no concerns about things that could or could not be charged to the time sheets because Brooks always reviewed and if necessary corrected the time sheets. If Brooks had travel on them he knew how much travel he had actually completed. McCool did recall that Brooks could not charge travel on some cases when he was substituted as trial counsel but could charge time on cases where he was actively appointed by the court. If two or three defendants appeared at court on the same day, travel time was split between the defendants or charged one time only. McCool counted on Brooks to note those particular times and Brooks told-

Brooks
review

travel
split

McCool he tried to make sure travel was not billed to more than one defendant on those occasions. McCool had no concerns about time billed on the time sheets but had no way of knowing what time Brooks spent at home working on the cases. *- told not f over h trans*

McCool has seen a copy of the OID letter to a judge expressing concern about time submitted and has seen letters from SCCID General Counsel Ryan. On those occasions Brooks asked McCool to pull the files, look at them and plot them on a calendar to check the dates and times. *(no intent?) asked her to check files for time*

McCool handled mostly PCR and General Sessions cases at first and most of the PCR cases were under \$1,000. Charles handled the time sheets and vouchers for probation violations and Jenkins did Family Court, including vulnerable adults and DSS cases.

McCool always had approval from Brooks on time sheets before they were submitted and noted that there were many corrections made for grammar as well as time by Brooks on the time sheets returned to her. McCool made the corrections and returned the file to Brooks for his final approval. When Brooks approved the time sheets, McCool completed the vouchers. Brooks has never told McCool that he was unhappy or had any problem with her work or the way she prepared time sheets and vouchers. McCool advised that she would be very upset if anyone said she was not doing time sheets and vouchers correctly and she has not been advised of that in the past. *- approval*

Brooks was married in approximately Feb. 2000, and didn't go on a honeymoon. He has never even taken a vacation. McCool remembers Brooks taking possibly two days of personal time since she has worked for him. Brooks' normal work hours are 9:00 a.m. or 10:00 a.m. because he has to travel to his office in Sumter from Columbia and he works until approximately 8:00 p.m. and on weekends. Brooks comes in on weekends and sometimes on his way to church and is known to stop at the office on Sunday's, especially if he is having a hearing on Monday. McCool does not know the amount of work, if any, Brooks does at home but he typically takes files home with him. McCool does not normally work on the weekends but, sometimes when she passes the office, she notes that Brooks is there. McCool has never entered any time on time sheets or vouchers that was not approved by Brooks and has never been asked to falsify any time sheets or vouchers. (Attachment #4) *- works all the time*

On January 14, 2010, Trina Jenkins, Paralegal for the office of Charles Brooks, advised that in August 1999 she worked with Brooks and was the only employee at that time. When she started in 1999, McCool was hired and was the second employee in the office. Jenkins initially learned how to do vouchers by reviewing old vouchers and through trial and error and contacts with OID. Jenkins left employment of her own volition on some occasions to pursue other ventures but later went back to work at Brooks' office. Jenkins was a legal assistant, paralegal and office manager for Brooks in Feb. 2007. She believes she began doing vouchers on the computer around Feb. 2007. Jenkins reviewed case files and the computerized office calendar and put the files in chronological order before preparing time sheets for vouchers to OID. Sometimes, the time for an action was indicated in the file and sometimes Jenkins put the time on the time sheet she felt Brooks spent based upon his work on other cases. Jenkins knew how much time it took her to do certain duties and put that *reviewed files put vouchers taken*

how much time he took

put what she felt he had spent on other cases

time on the time sheets for those activities. Jenkins attached the time sheets to the case file and sent it to Brooks. Brooks reviewed the time sheets and vouchers, made the necessary changes and sent them back to Jenkins. Jenkins made the corrections and send them back to Brooks for approval. Once approved with a "okay" and Brooks' signature, Jenkins submitted the time sheets along with a voucher to OID.

Brooks
rev

Jenkins works primarily in family law which are DSS cases but has worked with a number of divorce and separation cases which were not covered under OID funding. Indigent cases worked in the office account for approximately 40% of the office case load and all other type cases were about 60%.

40/60
indigent

In June or July 2009, Jenkins left Brooks' office and, in Sept. 2009, began working with the U. S. Marshal's Service in Columbia. When Jenkins returned in 2007, vouchers were computerized and Sherry Charles and McCool helped Jenkins transition to the computer filing of time sheets and vouchers. Jenkins read the policy on the back of the voucher form in general so that she would do the voucher correctly.

read policy

OID would not process vouchers if they were incorrect and would contact the Law Firm. If OID questioned the time, Jenkins reviewed it, talked with Brooks and, if it was correct according to Brooks, the office had to submit an order for a judge to sign or approve the amount on the voucher, which was resent to OID. If the date of the charge was wrong or if some other mistake was made, the office made the correction per approval of Brooks and OID "unlocked" the voucher and Jenkins made the correction on-line. OID called the office concerning about 30% of the vouchers and time sheets submitted so Jenkins was very familiar with OID's requirements. Jenkins placed a copy of the completed time sheet and voucher in the case file which was kept in the office. Older files were kept in a Sumter self storage facility.

OID
contra

un/0
correction

OID called 30% of time

Jenkins reiterated that she knew approximately how much time it took her complete certain tasks and she put that on the time sheet, however, normally the time was there on the document provided by Brooks and he usually had his time noted in the file. If the time was not noted in the file, Jenkins asked Brooks for the time. Jenkins is not sure but thinks that administrative time would be under administrative costs under the "not pay" section but in 2007 she may have billed for administrative work but that was questioned by OID and she stopped.

The office used to bill for time to and from court and OID advised that they could not bill for travel time unless Brooks was appointed counsel. OID further advised that travel time to court could only be charged for one defendant or split between defendants if more than one went to court on the same day. Jenkins reiterated that all time sheets were submitted to Brooks for his approval and were only submitted to OID after his okay.

Brooks opened his mail and sometimes Jenkins or other office personnel deposited checks from OID, however, Jenkins could not recall which accounts were in which bank. Jenkins never received any part of the money received from OID and remarked that Brooks was a tightwad.

Jenkins does not recall Brooks doing any time sheets on his own. Jenkins did not recall reviewing the Sept. 2007 Supreme Court Order regarding what could and could not be submitted as charges, however, if she had to quantify the correctness of time sheets she would estimate that approximately 7% of the vouchers reflected time that was too low for the work and approximately 5% reflected time that was too high for the work.

OID called the office a lot and the office hated it. The office tried to be sure that everything was "just right" because they knew OID looked at everything. If the office staff did not do the time sheets correctly, it was not their fault because Brooks reviewed and approved everything.

Jenkins described Brooks as being at the office in the morning before Jenkins got there and he was there when the office staff left in the evening. Brooks took case files home and they had to ask Brooks to bring case files back so that they could do work in them. Brooks did legal update training rather than take the time away from his practice to attend and, on holidays, Jenkins sometimes passed the office and noted that Brooks was there. Sometimes Jenkins and McCool would go to the office to work on the weekends and Brooks came in most weekends.

Jenkins never knowingly or intentionally filed false time sheets or vouchers and was never asked to do so. Jenkins was shown OID submissions of all time worked for the period 2005 thru 2009 and does not know why some of the billings would reflect more than 24 hours worked in a day. Jenkins organized files as they were given to her and prepared time sheets based upon documents in the file and the information provided by Brooks. Jenkins had no way of determining what other charges or other activities may have been submitted for the same day under another case file because she prepared time sheets by case rather than total time by day and only worked one case file at a time. (Attachment #5)

On January 22, 2010, Scheherazade Charles was interviewed and advised that, sometime around April 2005, she began working at the Brooks Law Firm. McCool was the office manager and she trained Charles in preparing time sheets and vouchers. Jenkins also remained in the office for 2 or 3 weeks after Charles became employed and also assisted in training her on voucher preparation. Brooks also assisted in training Charles in the preparation of time sheets and vouchers and she often reviewed old office files to learn how the time sheets and vouchers were prepared. Shortly after, in April or May 2005, Dionne Dees was hired to work in the office and left employment in approximately March 2006. In July 2005, Time sheets and vouchers took up most of Charles' time and also from April 2006 until she left around January 2007. Charles worked for Brooks from around April 2005 until approximately January 2007 and left for approximately 5 or 6 months.

Approximately 30% of the office clientele were paying clients and approximately 70% were OID indigent paid cases. Charles primarily prepared time sheets and vouchers for PCR and DSS indigent cases and she thinks those were the only indigent vouchers prepared by the office. Charles does not know if Brooks prepared any time sheets or vouchers. Brooks was normally in the office before Charles arrived and was there after she left in the evening. Charles did not work weekends so does not know if Brooks worked on the weekends. As the other employees advised, Charles does

not recall Brooks taking a vacation while she was employed at the office. Charles is not aware of any other attorney work that was done in the office other than a minimal amount of time sheets and vouchers for Irma Brooks, Charles Brooks' wife, who was also an attorney. Charles believes she did approximately 10 vouchers for Irma Brooks the whole time she worked in Charles Brooks' office.

If Charles opened a new case file, she usually put a time sheet in the folder, however, other employees did not always do that. Charles first organized the case file prior to completing a time sheet or voucher. If she did not know or recall the time that was spent on an activity, she always asked Brooks. When Charles closed a case file, she put the file in chronological order and made sure that the activities and times regarding time worked were noted on the time sheet. Charles went through the office calender and noted the times of clients appointments. On many occasions, since she was in the office, she observed and noted the time Brooks spent with a client. Charles also noted on the office calender if the appointment was not kept and asked Brooks how much time to put on the time sheet. If Charles had any questions about time to be charged, she always asked Brooks.

When Charles finished reviewing a file and prepared the time sheet, she usually placed the time sheet, along with the file, on a table for Brooks' review. If Brooks had any questions about the entries on the time sheet, he asked to see the file. Brooks always told Charles what changes to make on the time sheets. If a change was made, she returned the time sheet for Brooks' final review and signature. Charles put a copy of the time sheet and voucher in the case file.

Charles recalled that Brooks returned about 40% of the time sheets for corrections or updates and she believes that about 10% of the time sheets returned to her required her to increase the time and about 5% of those returned required her to decrease the time.

About 10% of the vouchers were returned by OID for corrections or additional documents. Charles does not recall OID sending back vouchers to increase the time and 1% or 2% of the vouchers noted that the time should be decreased. Most of the time sheets and vouchers returned by OID were returned because of a new procedure they were implementing or they requested that additional documents be submitted with the voucher.

When Charles returned to Brooks' office around May 2007, she worked until July 2007 on a 4 hour part-time basis and was completing time sheets and vouchers only. Charles was never told by Brooks or anyone else that she was making errors or improperly preparing time sheets or vouchers.

Charles never received a bonus or percentage based on the number of time sheets and vouchers submitted to OID. The staff never opened Brooks' mail and put all the OID checks on the table for Brooks. Charles was never asked nor did she falsify any time sheets or vouchers.

Case files are normally maintained in the front office in a common area where the administrative employee worked.

Charles reviewed SCCID form 100, Defensive Indigent Voucher, and SCCID form 300 for Attorney Time Sheets and recognized them as being what she prepared. (Attachment #6)

On September 3, 2010, Dionne Deese Council was interviewed and advised that around August 2005, she began working at the Brooks Law Office in administration. Charles was hired the same day. Jenkins left the office within a short time and McCool was working in the office when they began. Council worked for Brooks for approximately 8 months, leaving in March 2006 to work for SCDOR. Council described Brooks as a very hard person to work with, who did not know how to talk to people. Council was hired to handle criminal law work but actually did everything in the office when asked. Council typically reviewed PCR correspondence, advised Brooks on upcoming scheduled hearings, reviewed probation case correspondence, sent out letter, kept up with court schedules and prepared vouchers as assigned by Brooks. She worked on some case files from their inception and others were given to her randomly for administrative work or the preparation and filing of vouchers. Council also completed vouchers for PCR and Pardon, Probation and Parole cases and may have done a few family court cases. Brooks' wife, Irma Brooks, was pregnant at the time and had a baby in June 2006 so Council only saw her on one occasion. Council does not believe she did any vouchers for Irma Brooks. Council did no work for Irma Brooks and not recall Irma Brooks attending any court hearings for Brooks' office.

Council could not determine the actual amount of indigent versus paying client cases in Brooks' office but believes that the indigent work may have been greater. Council remembers that Charles and McCool prepared vouchers. Council did not receive formal training on preparing time sheets and vouchers so she reviewed closed case files to see how they were done. She and Charles learned how together and, if Council had a question, she asked McCool for assistance. Council did not go to Brooks for assistance because he was always rude and hard to deal with. Brooks told Council and other employees to review case files, list the activities of work done and put the time on the time sheet and send it to him for review and approval. When Council reviewed case files, she discovered that, on the inside cover of the case file, the activities that had been done were listed thus far, however, the list of activities did not reflect the amount of time those activities took. Council reorganized the file before preparing the voucher by putting the reports in ascending order with the earliest date on top. Council asked Brooks how much time to put on the voucher time sheet for correspondence and other activities because she did not know how much time it took him to perform those activities. Brooks told Council he wanted to be sure it was correct because that was how he got paid by the State. Brooks told Council to use the same time in cases for particular activities such as court time and meeting with clients prior to court which was usually 2.5 hours. He also told her the time to use for filing letters and correspondence which was typically 30 minutes and research was typically 2 hours. After the time sheet was done, if Council had questions she went to Brooks. Council always put the date and what activity she completed on the activity list in the case file so that, if there was a dispute, she could go back to her notations in the file. Sometimes clients disputed receiving notification or information from the office so she wanted to be sure that was documented.

Council also got information from Brooks' computer "outlook" calendar on which were listed Brooks' activities for the day. Council did not see notes in the case files of exactly what time

Brooks started and ended his activities or the time involved in those activities. Brooks usually told the employees when he was leaving the office, where he was going and who he was meeting. The employees put Brooks' schedule, as given them, on the computer and they checked the "outlook" calender for Brooks' whereabouts.

If someone else did work on the file, whatever date they put on the list in the file is the date Council used when she prepared the final voucher time sheet. Council believes that everyone was doing the vouchers the same way. Council does not know if Brooks did nor did she see him do any vouchers.

Council got the files ready for court when Brooks told her he would be meeting with a client. Brooks sometimes typed his itinerary and who he would be meeting into the "outlook" calender and he sometimes told Council when he had met with a client and it would be entered on his calender. Brooks prepared sticky notes of what to do on things in the file. Rarely would there be notes of the time or date that an activity occurred. Council used the information contained in the file to determine what date the activity occurred and what time Brooks indicated as time worked.

Once the file was organized in ascending order, Council compared the documents in the file with the list of activities to be sure all activities were noted. If an activity could not be found on the list, Council added the activity on the list. Correspondence and items sent out normally had a date and that date was used as the date of the activity. Dates and other activities written on the time sheet were based on what was noted on the correspondence, what Brooks told her or what she noted from the "outlook" calender on the computer. Most everything in the file had a date on it.

The administrative files were located at the front of the office and any files, vouchers and time sheets or other correspondence for Brooks' review were left on a table near the third assistant's desk. After completing work or review or noting necessary changes, Brooks returned the file to the table for pick up by the office assistants. After Council prepared the time sheets and vouchers, she placed them on the table for Brooks' review and final approval. If there were no corrections, Brooks signed and returned the voucher, however, sometimes Brooks expressed that he felt he had done more work on the case than was reflected on the time sheet and asked that the file be reviewed to ensure all work done had been included on the voucher. Council does not recall Brooks changing the hours on any vouchers she submitted. If there were corrections, Council made them and returned them to Brooks for his approval and signature.

After reviewing the vouchers approved by Brooks, Council sent the completed vouchers with the orders to the Judge and, when necessary, to the Clerk of Court for their review and signature. When returned signed, the vouchers were sent to OID for payment.

Council never had a problem with OID regarding the vouchers she prepared and does not remember meeting or discussing voucher problems with anyone from OID. Council also made sure a copy of the completed voucher was placed in the case file before it was closed.

Council did not handle the mail, which was picked up by any employee who was near the post office and placed unopened on the table for Brooks' review.

Council never intentionally prepared false time sheets or false vouchers nor was she asked to do so. Council never had complaints from anyone about the way she was doing vouchers and was never told that her work was not satisfactory.

Council does not remember receiving printed guidelines from OID and does not remember speaking with OID staff regarding concerns about vouchers. (Attachment #7)

Investigation disclosed that there were a number of properties in Brooks' name in Sumter County which appeared to be residences with mortgages held primarily by Sumter National Bank. Mortgages reflected in 2003 and 2004 were made, some were satisfied and a number are still outstanding. A Master of Equity sale is reflected for one property in Richland County on Dec. 31, 2009 with the sales price of approximately \$74,500. On Jan. 19, 2006 Brooks' residence at 402 Fetter Bush Rd., Elgin, SC 29045, was purchased by Brooks for \$425,000 and the mortgage is currently held by Sumter National Bank. A few civil suits are also reflected in this report and SCDOR records reflect on 10-14-08, Charles and Irma Books were assessed a tax of \$4,757 with a penalty of \$428.79 and interest of \$194.66 plus court costs of \$279.02 for a total of \$5,659.47. Total remaining amount to be paid is \$220.61. The total due as of Feb. 2010, with additional interest, was \$514.56. (Attachment 8)

On February 11, 2010, Attorney Desa Ballard canceled the scheduled interview by S/I Cathey with Charles Brooks on Feb. 12, 2010, but advised that she and Brooks want to come in and explain their position on the number of hours Brooks submitted on time sheets and vouchers. Attorney Ballard's accountant is trying to determine the accuracy of time sheets and vouchers submitted by Brooks.

Attorney Ballard advised there was no way to reconstruct the client billings because they cannot pinpoint which entries are accurate. Brooks did not intentionally file incorrect time sheets and vouchers and all errors are inadvertent. Attorney Ballard is trying to work with OID to reach an agreement regarding the amount of money owed to or by Brooks and Ballard's accountant has determined that OID has entered double billings for the same dates. Attorney Ballard further advised that she has had no success in dealing with OID to work out an agreement and, therefore, has contacted OID's Commission for assistance. Attorney Sabrina Todd at the Office of Disciplinary Counsel has advised Attorney Ballard that Todd has also had problems working with OID and OID will not cooperate with her in her investigation of the Brooks matter.

Attorney Ballard intimated that Brooks' wife, Irma Brooks, does not have a password or identifying number with OID and has been submitting time sheets and vouchers for work done by her under Charles Brooks' password. The hours she worked on cases and reported under Charles Brooks' password are being attributed to Charles Brooks and added to his daily time for the time she actually worked. Attorney Ballard needed a couple more weeks to prepare for bringing Charles

Brooks in for an interview. (Attachment #9)

On April 1, 2010, SCCID provided a copy of exhibit A & B attached to the Oct. 2, 2009 letter from OID to Attorney Brooks; a copy of the civil appointment voucher marked received by indigent defense Sept. 29, 2006 with attachments; a defense of indigent voucher in blank, front and back and a civil appointment voucher marked received by indigent defense Nov. 29, 2004 bearing the signature of Charles T. Brooks, III. (Attachment #10)

Spent time with
On March 30, 2010, Charles Brooks, in the company of his attorney, Desa Ballard, Accountant Marla T. Ballard and Court Reporter Bruce H. Peggs, was interviewed at which time Attorney Ballard advised that they didn't have specific answers at this point because they had not been able to get the information from SCCID. Attorney Ballard advised that Brooks, in addition to being represented by her, was also represented by Attorney Ralph McCullough.

probation
Brooks currently has two employees in his office, plus a part-time employee, Ms. Jenkins. For the last couple of years, he has been doing mostly court appointed work, including referrals from the Attorney General's Office. Brooks' practice consists of sexually violent predators, DSS, child support, abuse and neglect, of which all are appointed cases and also does civil work. Brooks became the defacto probation public defender and in 2006-2007 started doing court appointed work for which he was billing OID. Brooks' court appointed work was primarily in Sumter County, handling probation matters. He told the Clerks of Court that he would do all of those probation matters because he has a good rapport with the probation office. Brooks offered to provide S/I Cathey with signed statements and affidavits from the probation office regarding that. Probation cases in Sumter were typically held on Friday and when Brooks was present he was sometimes assigned additional cases by the judge. All of Brooks' probation cases were billable to OID. More than 50% of his office work and maybe 60% was involved with OID reimbursable cases. Brooks has two large file cabinets filled with PCR cases.

Irma
McCool was an employee working in Brooks' office beginning in January of 2006 to present. Brooks' wife, Attorney Irma Brooks, sometimes works in his office and in 2007 she was doing a fair amount of DSS work, which were indigent defense cases. Brooks then advised that Irma Brooks may have done a few indigent defense cases in 2008 but would still do appeals and PCR cases at the house because most of the cases were in his name. Those cases consisted primarily of appeals and research for Charles Brooks. Brooks' office submitted time sheets under his name for work that Irma Brooks actually performed. DSS cases had a lot of hearings involved and sometimes Charles Brooks would appear for a hearing on a case that Irma Brooks was working and vice versa. Brooks noted that part of the problem was that there is a gap between lawyers who work cases verses lawyers who don't practice law and their understanding of how attorneys could work together on a case, how the office staff would put all of the attorneys' time on a voucher under one attorney's name and that there wouldn't be any way to tell which attorney had actually done the work. Various orders submitted with the vouchers would list which attorney was there arguing the case, however, it would not show any work the attorney would have done outside the court.

Brooks noted that OID's policy and procedure that sets out what can be billed and what cannot be billed would frequently change and OID would say yes they would pay this and then sometimes they would say they didn't pay for that. Brooks reviewed the Supreme Court letter dated Sept. 29, 2006 and Attorney Ballard noted that they were policies not regulations and that they were adopted Sept. 25, 2007. Brooks advised that there was not a whole lot of anything in writing prior to 2007. His staff figured it out on their own and called OID because of all the changes in what OID would pay for on one day and not pay for the next. Brooks never received anything directly from OID on how to file vouchers and about what was allowed and what was not allowed. OID would simply call his office and talk with his staff. Brooks went along with what his employees told him that OID said had to be done. Sometimes OID wanted the voucher changed and sometimes they'd say just do the voucher again or sometimes they would make the change for Brooks' staff. E-mails were sent from OID to his office and Brooks forwarded them to his staff and directed that they call OID and take care of the problem. OID never sent Charles Brooks the 10 page document entitled SCCID Voucher Payment Policy adopted by the commission Sep. 25, 2007. His office staff tried to file their vouchers in accordance with what OID wanted to keep OID from calling the office. From the very beginning, Brooks' office never had an idea of what they could or couldn't charge and would put in what they thought was normal. Whatever OID said was what the office did.

no &
policy

policy
manual

Brooks left notes in the case files regarding sending letters to clients and the office staff would pretty much construct the time sheets based on notes in the file or letters mailed out and conversations, hearings, etc., in order to prepare the vouchers. The staff gave him the time sheet and he reviewed it to make sure they didn't list anything that he didn't do.

Brooks did not have a computer billing software at that time but now has a billing software to enter this information as of the end of 2009.

Brooks put notes in the file regarding hearings, noting that it was a long or contested hearing and how long it took because when he came back from the hearing it was fresh in his mind and he would leave a note. If case work was done on a PCR, he would review the file and the time was usually the same on PCR cases. Usually an hour and 20 minutes for file review, however, Brooks had bad bookkeeping and they didn't keep precise records in terms of which file came in and what happened on one day and how much time he spent that day reviewing the file. Brooks would know when he received a voucher from his staff if there was an inordinate amount of time for an activity but he only looked at each file on an individual case by case basis. Brooks and OID disputed travel from time to time because it seemed to often change as to what was allowed by OID and what was not allowed. Brooks typically put a note in the file as to what prison he visited and it was probably also on his "outlook" calendar. Brooks remembered on one occasion on a voucher he shorted himself some time and Mr. Ryan of OID brought it to his attention.

flat fee
- no good
records

Brooks reiterated that he didn't have a specific method of recording the time he spent working on a file. He also did not have contemporaneous billing records at that point and that's why he now has AMICUS billing software in place.

- no
contemporaneous
records keeping

Brooks looked at the vouchers to make sure that they were correct. Brooks also indicated that he received phone calls from clients and he never kept track of that time. His staff noted that they were losing money by not listing that time and that's why they now have the AMICUS program. Brooks probably gets about 5 to 10 letters from jail every day or every other day.

Brooks did not keep travel time contemporaneously nor the actual amount of time he spent talking to clients at court. Sometimes he had several PCR hearing at one time and sometimes he worked through lunch, after arriving early in the morning and staying late in the day. Brooks didn't keep a record of that because it was only him and he didn't have his staff with him. When his staff put his vouchers together, Brooks and his staff looked to make sure that it was correct. He was looking at each case on an individual case basis so that's why there may have been multiple days that had an inordinate amount of time. OID told him, for example, that he could not put travel time for Winnsboro for anyone and, sometimes, if his staff put multiple travel times on a particular day, OID called and said not to do that anymore however, OID never unlocked the vouchers so that the office staff could change them. Only the attorney appointed to a PCR case could charge for travel. Brooks finally decided he wasn't going to fight with OID because, since he had so many cases, it was basically volume. OID started running low on money in 2007 and 2008 and started changing the rules.

Brooks noted by looking at a handful of vouchers he reviewed that Laurie Frost, at OID, put a lot of times on the vouchers in 2007. Brooks noted a particular file on Anthony Crum and noted that they had a court hearing in November 2006 and Frost input the hours in November 2007 because that's when they went from paper to computer. Frost made the entry and not Brooks or his staff. Attorney Ballard noted that OID would have an entry for a case even though the hours were worked on different days; for example, if it was a total voucher of 17 hours, they would enter those 17 hours that day and then they would add those hours to the individual entries that were actually worked that day, so they were actually double-billing hours. Brooks alleged that OID was double-billing hours on all the lawyers out there the AG's Office is only talking to the lawyer (Brooks) that has become an issue.

Brooks is apprehensive saying that S/I Cathey had "bust up in his office all unannounced and I don't know what in the world you are, okay" so that S/I Cathey can understand his apprehension. Brooks also alleged that General Counsel Ryan offered to pay Brooks after Ryan discovered all this. Brooks had about 30 to 35 vouchers at OID when all this popped up that he hadn't been paid on and then Attorney Ryan sent a letter to Brooks that OID was willing to pay Brooks on those vouchers. Brooks had also "seen" in the letter from Attorney Ryan that the only reason Attorney Ryan went to the AG's Office was because ODC didn't do what Attorney Ryan thought they should.

Attorney Ballard again alleged that OID would not provide information requested so that she could determine which vouchers were incorrect. Brooks added that he had a theory, however, Attorney Ballard advised Brooks to hold his theory because they had to leave. (Attachment #11)

On April 1, 2010, Charles T. Brooks, III, was again interviewed in the presence of his

Attorney Desa Ballard and Office Manager Marla T. Ballard, which was transcribed. Attorney Ballard advised that OID's information is inaccurate regarding vouchers and that OID actually corrected it to Disciplinary Council, however, she does not know whether OID has given SI Cathey corrected spreadsheets. Disciplinary Council has e-mailed her a 300 page spreadsheet and she will provide that to SI Cathey. Attorney Ballard continued that she has talked with OID and OID has acknowledged that the information they initially provided SI Cathey is incorrect and they have corrected it now, however, Attorney Ballard has not had the opportunity to go through the spreadsheet to see if she agrees with OID's corrected version. Attorney Ballard is still having trouble getting information from OID and has received absolutely nothing. The only information she has received is from the Office of Disciplinary Council. Attorney Ballard has gotten an original spreadsheet provided by Attorney Ryan that OID has acknowledged to be incorrect and they have received an amended spreadsheet from the Office of Disciplinary Council which they've not had an opportunity to review, however, they have not received the individual vouchers they requested nor anything else they've requested from OID.

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Attorney Ballard continued to allege that OID personnel were making changes to vouchers without the knowledge of Brooks and provided examples.

Brooks added that this has created a huge problem and that's why he's gotten counsel to assist in reviewing all of his vouchers to be sure which mistakes were made by his office and what mistakes were actually made by OID. Brooks believes that OID may actually owe him a bunch of money. Attorney Ballard advised that Brooks would not be in a position to explain any particular entry on a particular case voucher because they are not in a position to do that. Brooks, along with Attorney Ballard, advised that they could not determine actually when vouchers began being submitted electronically. Initially, Brooks' office was required to submit the handwritten time sheets to OID and OID would input the information into the computer system. Brooks believes that OID employee, Laurie Frost, actually input the information and at that point Brooks' office had no idea what information Frost was inputting. It was during this time that OID would also call Brooks' office and advise that they could charge for this or could not charge for that or that OID might make the change for Brooks' office on the vouchers themselves and the vouchers were then locked and Brooks' office could not go back into the system to make changes.

Laurie
Frost

OID
making
changes

Brooks does not know exactly when the system became computerized but he noticed that there were changes as late as December 2007 made to vouchers by OID employee, Laurie Frost. Brooks does not know when his office got to the point where they could just press click and download the voucher information to OID. Brooks does not have a copy of Rule 602 and advised that he actually represents clients as zealously as possible and does not know, off the top of his head, what Rule 602 is. Brooks said he had so many cases going that that's what his ladies in his office did was get familiar with being able to put the information into the vouchers as OID would tell them because he had so many other cases that he was working on. Brooks had conversations with OID and always let them know exactly what his office was doing. If OID called and said there was a problem, his office would make the changes based on what OID told them to do. Brooks admitted that he has skimmed across the SCCID website but, as far as sitting down and reading and knowing

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each and every detail, he didn't. Brooks reiterated that his office staff would put the information in the vouchers but, because things would change so often, his office had constant contact with OID. OID kept telling him he could bill certain things and could not bill for other things and that the rules had changed. Brooks continued that it was not so much what was written on paper but what the OID staff told Brooks staff that they could or could not submit.

had seen rules

Brooks finally admitted that he had seen some of the rules for submitting vouchers on indigent defense cases adopted by OID on Sept. 25, 2007, containing 18 pages and had seen the fees of appointed counsel, what the limits were based on, types of cases and the requirements to go and get a judges order. Brooks added that OID would change things such that when he talked about advance of funds, at one point you could go ahead and get \$500 and get an investigator, but now OID says they won't give you the money until the case is over. Brooks added that OID would change how they interpreted their policies and procedures as well as on transcripts, long distance calls, mileage, meals, however, Brooks said he never charged any meals, lodging or anything like that. Brooks added that its up to them, referring to OID, that they are the ones who are responsible for reviewing anything submitted and then telling you if there is a problem with it so that you can make the changes and correct it. Brooks added that his office would make sure that, if there was a problem, they were in constant contact with OID and OID's personnel would call them and tell them what was okay to bill one day and then they would come back and change it. *OID changes* OID had even gone back into the system after a changed-time sheets and admitted that, if there were any mistakes, and there were mistakes on their part, that there was never any intent because, if OID told them something was wrong, they would change it, they would make the adjustment. Whatever OID said for Brooks' office to do, they did it. (Brooks said this same thing about 10 times!!) Brooks meantime had a bunch of cases and was working and trying to his job as a lawyer and represent the people.

During questioning on specific vouchers, Ballard identified those as the type of vouchers they had asked OID for and, in fact, they had asked OID for all of the individual vouchers submitted by Brooks' office as well as the raw data in their spreadsheets, however, OID has given them nothing.

Ryan Brooks advised that General Counsel Ryan of OID got into an issue with him about a bill and got upset and sent spreadsheets of vouchers, that Brooks' office filed, to the Office of Disciplinary Council. General Counsel Ryan has been hounding ODC about suspending Brooks. ODC has indicated that they don't feel it's a matter that warrants suspension, however they are still investigating and they need information their not getting from OID. Attorney Ballard advised that Brooks had gotten his information from her and Brooks advised that he has not been suspended. Brooks' is of the opinion that General Counsel Ryan was upset because ODC didn't see the problem as warranting suspension and that's why General Counsel Ryan has not turned the information over to Attorney Ballard. General Counsel Ryan got mad and sent the information to the Attorney General's Office. Brooks believes that General Counsel Ryan knows this is a civil matter but he got upset because he thought ODC wasn't doing anything.

Brooks advised that the compiling of a voucher may have sometimes been a combination of

Brooks and sometimes his staff and sometimes Brooks' compiling the voucher information. Brooks reviewed vouchers to make sure that it was correct and it varied from case to case as to who prepared the voucher. Brooks does not believe that any of his staff were intentionally submitted fraudulent vouchers.

On vouchers for case work done by Brooks' wife, the office staff sent the vouchers to her for her review. Sometimes he and his wife worked on the same case. Brooks advised that his wife was doing a lot of DSS cases although sometimes he might stand in as the attorney in court. Brooks reiterated that he did not know if he or his office staff made mistakes but, if they did, then obviously they were mistakes and there was never any intent to defraud OID. There were no other lawyers who worked on cases in Brooks' office other than he and his wife. *! wife*

For his non-indigent defense clients, Brooks and the office reconstructed their fees based on the retainer he had been given. They now realize that there were problems about how to determine those fees and that's why Brooks has now gotten AMICUS to make sure that all the information is entered into the system.

Frost Brooks believes he has copies of all his closed files and presumes that copies of submitted vouchers are in the case files. Brooks is required to keep the files for 6 years. Brooks admitted that he may have made some mistakes in filing vouchers. Brooks is not sure, but believes that, after initially being told that he made a whole bunch of mistakes, he's finding out, based on some of Frost's entries in the computer system, that he may not have made any. Brooks talked with OID staff on occasion and there is some e-mail correspondence to that. Brooks is not aware that he has ever received too much money in OID reimbursements, however, he did, inadvertently, receive a check for another attorney and sent the check back to OID.

There was one time when he inadvertently put multiple travel on some cases. OID called him later and said don't do it again and that they would correct it. As far as Brooks knows, OID corrected the vouchers. The rules for travel would change and Brooks' office had to talk with OID again regarding submitted vouchers. *travel*

Brooks' deposited voucher checks received from the State into his operating account. Brooks cannot recall if his wife prepared any vouchers on her own.

Brooks identified a letter to him from SCCID General Counsel Ryan dated October 2, 2009, and also identified a letter dated October 2, 2009 from Brooks to General Counsel Ryan in which Brooks advised that he discovered problems with his vouchers and was immediately reviewing his files. Brooks, to date, has not written anything down about what the specific problems were that Brooks identified. Brooks said that to his October 5, 2009 letter to General Counsel Ryan he attached amended time sheets for those vouchers referenced in attachments A and B of General Counsel Ryan's October 2, 2009 letter. Brooks asked OID to "unlock" the time sheets on those vouchers so Brooks and his staff could make the corrections. Brooks also requested that OID not pay any of the vouchers until Brooks reviewed all of his vouchers ever submitted. Although Brooks *10/09
amended*

said OID made a lot of mistakes on those vouchers, Brooks does not have any of the corrections documented as he stated in his letter. Brooks does not want to provide that information until he gets all of the information from OID to be sure that the errors on the vouchers were not OID's errors rather than his. In one instance Brooks told OID in an August 26, 2009 e-mail that he changed the hours for court from 6.5 to 5 hours on July 6, 2009, and did that because, since he does so many cases, it really is not cost effective to sit and argue with OID about one case. Prior to that, OID had paid the same number of hours on other cases of the same nature but it wasn't cost effective to argue about it. Brooks noted a voucher in one instance where Laurie Frost entered 20 hours and that's why he needs a new spreadsheet from OID to determine who actually made the entries. Attorney Ballard added that they know that there are errors on some of the vouchers but some of those errors are OID's as well as Brooks' office but, until Brooks has all of the information, they can't answer questions. Chang
6.5 to 5

Brooks and Attorney Ballard refused to allow inspection of his closed case files until they receive all the information from OID. Brooks did not concede that he actually billed all the hours reflected for his voucher numbers, maintaining that OID changed some vouchers and did billing without his knowledge. However, Brooks has not billed any hours on his vouchers that he did not work.

S/I Cathey asked Brooks to allow the review of his personal and operating business accounts in order to follow the money from OID, however, he has not complied. (Attachment #12)

On April 6, 2010, Ryan Cole, Database Specialist at SCCID provided a printout dated April 6, 2010 entitled Charles T. Brooks Legend of Cases with Case Types and also a spreadsheet pages 1 thru 13 entitled Charles T. Brooks Time Sheets (over 23.5 hours only) as of 10-9-09 vouchers created by L. Frost removed 4-2-10. (Attachment #13)

multiple
travel
time On April 19, 2010, a letter dated April 16, 2010 was received from Attorney Harvey M. Watson, III, of the Law Offices of Desa Ballard advising that Brooks accidentally submitted vouchers requesting multiples of the actual travel time spent regarding multiple matters that had been heard on the same day at the same court. Watson also advised that Brooks could not separate the true accounting mistakes of his and those generated by accounting irregularities by OID. Attorney Watson requested copies of SCCID payment policies and billing guidelines as they apply for the various time periods from 2003 to date. Attorney Watson acknowledged that Brooks had been requested to provide access to his personal and business bank accounts but did not address that request, however, advised that Brooks was willing to provide personal income tax returns covering the period in question. Attorney Watson did not address the prior request to examine Brooks' closed case files. (Attachment #14)

Memorandum of April 27, 2010, transcribed interview of Irma Brooks in the company of her attorney, Charles J. Johnson by reporter Bruce Peggs at which time Irma Brooks advised that she received her law degree in 1995 and is currently working on a Masters Degree in Education. Brooks worked for a short time at the Sixth Circuit Solicitor's Office for Chester, Fairfield and Lancaster

check!
Counties as a drug prosecutor and was also a prosecutor in Richland County. Around 2001 she began working with her husband, Charles Brooks, in his law firm, which consisted of only she and her husband. Brooks mainly focused on family court matters, Department of Social Services matters and also did a variety of other case work. If any appellate work was necessary, she did work on those cases as well but no PCR case work unless it was an appellate matter. Brooks also had a contract with the State for representation as a Guardian Ad Litem, mainly in Sumter County. Brooks was not at the office every day and they also had an office in their home. She and her husband would decide which cases they would each work on and her husband would get her the file and she would work on that case at home. Irma Brooks did not have an independent staff but the majority of cases came to her due to advertising from the office. Charles Brooks primarily handled the initial PCR cases and maybe handled the cases where the attorney had to visit the client at the jail.

Brooks said she worked mainly on assigned cases, however, they had 4 children and three were babies at one time so, if she had a conflict and couldn't attend a hearing, Charles Brooks might be going to that court anyway and he would appear on her behalf. There were other cases where he was supposed to appear but something came up and she went to that hearing because she was going to that court anyway. Charles Brooks handled the more complex cases and she handled the more highly contested cases. If Irma worked the case, she noted in the file what occurred on the case no matter who was actually appointed to the case. However, if it was an indigent defense case, OID would not send the paperwork to her since she was not appointed and the paperwork went to the responsible attorney, Charles Brooks. If Irma worked on a case, she noted in the file all the work and time she spent on the case so that, when preparing the voucher, it would be based on the notes she put in the file. She could not remember if she actually had to sign the vouchers of the cases she worked on.

The voucher went to OID under Charles Brooks' name because he was the appointed attorney. The office's biggest time keeping was connected to the indigent defense cases because on those cases they had to account to the State through the voucher for the billing. The time sheets in indigent defense cases were centered around court appearances, conferences and that kind of thing so that's how they reviewed the file and determined if it was an indigent defense case. If they worked a case jointly, they both reviewed the vouchers for correctness. She can recall only a handful of e-mails that might have indicated that something additional was needed by OID. She remembers OID calling the office on occasion and mentioning that additional information was needed regarding a voucher and that an adjustment needed to be made. At one time OID paid for travel and then they stopped paying for travel so that had to be changed on vouchers. She recalled one occasion in 2009 in which they had an extreme issue with OID on an appellate case that her husband and she both handled. In her opinion, this current review by OID occurred after that particular occasion. They were not able to get the issue resolved by OID at a hearing and then the current investigation ensued.

Irma Brooks could not recall how their office staff was set up. At one time they may have had 3 women who worked for them and they had assignments but she could not be sure who worked on which vouchers and who may have handled PCR, DSS or other case vouchers.

Irma Brooks believes she learned how to prepare vouchers when she was working for Attorney Masella's Office prior to working with her husband. She worked on some indigent cases there and that's how she learned the billing procedures. She does not believe that the Brooks' Law Firm has had training for the attorneys about billing. She is not aware of particular instructions on the preparation of vouchers submitted by their office. Irma Brooks did not recall seeing Rule 602 or 608 nor the memorandum of July 6 and 8, 2005 from Chief Justice Toal regarding indigent defenses. She believes the office was aware of the allowable fees and they followed whatever rules applied at the time they submitted vouchers. She does not remember seeing a CLE about OID billing or the like but she and her husband were aware of what was allowable. They read what they called advance sheets on a weekly basis and anytime there was a major rule change the Supreme Court initiated, they would be aware of it. The advance sheet is a weekly report of cases, rules and procedures that comes from the Supreme Court regarding changes in the law and covers cases that have come up and changed the law. Those issues were discussed around the office and sometimes the Trial Lawyers Association also sent out information. She believes that any major changes that came down would have been discussed through a Continuing Legal Education (CLE), which they would have attended.

no tra
or
instr
- 608
- 602
- Chief
memo

Brooks believes her last court appearance was probably the early part of 2009 and believes she stopped working cases around mid 2009. Starting in 2009 she started reducing her case load and did not accept as many cases. She began classes at school in the summer of 2008 but still worked on cases until approximately mid 2009. It has been a good 6 months prior to this interview that she has gone without a whole lot of new cases; however there may have been a couple of cases.

stopped
mid-0

Checks from OID in her name may have come directly to the office and she may have taken some of those checks directly without depositing them to the operating account. She was also sometimes paid out of the office account for work she did. She believes that all the OID checks received for office work were deposited into the trust account. Any OID checks with only her name on them were cashed by her.

Irma Brooks is not aware of any other attorneys doing work for the Brooks Law Firm. She never received any concerns from OID about the number of hours she was charging on vouchers either in her name or cases assigned to her husband. She believes that the office kept copies of time sheets and vouchers in each case file.

Irma Brooks has not talked with OID regarding voucher questions, however, what's troubling her is that on all of these questioned vouchers, OID approved and paid them. After they were submitted to OID for payment, they remained with OID for a period of time before they were paid. No issues came up about voucher billing until the office had a conflict with the Cooper/Epps case in 2009 which they were not able to resolve with OID. She and Charles Brooks worked very hard on the Cooper/Epps case but they had the conflict with General Counsel Ryan at OID over payment.

Cooper
Epps
Cooper
Epps
Case

What knowledge Irma Brooks has about OID questioning vouchers submitted by the Brooks Law Firm has come from Charles Brooks. She only knows what Charles Brooks has told her. She

is not aware of any time sheet or voucher problems that have been discovered within their office that appear to be based upon errors by the Brooks Law Firm. She was shown a letter dated October 2, 2009 and also one dated October 5, 2009 from the Brooks Law Firm to SCCID and she has reviewed the information about the potential discrepancies in the voucher from Charles Brooks. The Brooks Law Firm did acknowledge that they did not have a billing software package they were using, however it has been purchased and is now in use by the office. Irma Brooks never looked at the case files listed in Exhibit A and B of the above described letters and was not working in the office at the time those letters were written. She does remember discussing it with Charles Brooks and he said there were some amendments that needed to be made to some vouchers but she did not remember it standing out or being anything major.

not
work
on
case
ExA,

A general Rule 5 motion is on the computer, however the time it takes to prepare it depends on if you are directing your staff to pull that up, if you are pulling it up or if you are adding anything. She could not remember how long it took to prepare a Rule 5 motion unless she reviewed the actual motion. She usually took more time than others to make sure the motions were correct.

Rule 5

Irma Brooks was requested to furnish copies of her closed case files for review and she advised she would need to discuss that with her attorney and her husband because she had concerns about client confidentiality. Brooks did not subsequently authorize review of those files. (Attachment #15)

On May 5, 2010, Ryan Cole, SCCID, provided a computerized listing of "days over 24 hours; excludes created by L Frost; 10-9-09 update list created 2-19-10", which reflects 17 days wherein Brooks' vouchers reflected work hours in excess of 24 hours for each day. (Attachment #16)

17 days
> 24

On May 6, 2010, Ryan Cole, SCCID, provided time sheet analyses consisting of "Days where some of in-court and out of court days greater than 12 hours", greater than 24 hours; daily hours; rates and fees; days over 24 hours; excluding those created by L Frost; Charles T. Brooks case and voucher data as of Jan. 14, 2010, including SCCID numbers, attorney case type, attorney case name, attorney case county; attorney appointment date, CID #, user submit date, exhibit A & exhibit B vouchers in dispute and approved for payment subject for reimbursement, and voucher spending for approval starting with the F date of 6-25-07. (Attachment #17)

On May 27, 2010 a letter was received from Attorney Desa Ballard providing copies of amended vouchers for 30 cases which she references are the cases described in attachment A & B to an October 2, 2009 letter to Brooks from OGD, General Counsel Hugh Ryan. Ballard notes that in the October 5, 2009 letter Brooks provided copies of the amended vouchers and requested the vouchers be unlocked so he could make the noted changes. Attorney Ballard notes that General Counsel Ryan did not bother to provide these particular enclosures to Disciplinary Council when he authored the complaint to OCD by Mr. Adams, intending for ODC to conclude that Brooks was not being cooperative or otherwise not responding appropriately to the concerns raised by SCCID. Attorney Ballard also references that, apparently, General Counsel Ryan excluded them from materials he provided to the Attorney General's Office and goes on to note there may be additional

changes needed on these vouchers but they will demonstrate the changes that Brooks identified in October 2009. Attorney Ballard comments that they have determined there are duplicate billings and other matters, as well, that they are continuing to work on and they are conducting a document by document review of individual case files, focusing on the days reflected in Charles Brooks' vouchers requesting payment for more than 12 or more than 24 hours in a single day. Attorney Ballard added that they are almost finished removing privileged information from those case files and creating a "privilege log" in order that the Attorney General's Office can review the case files. (Attachment #18)

On May 21, 2010, Ryan Cole, SCCID, provided a 21 page printout entitled "Clients and docket numbers with docket and warrants" and a 9 page printout entitled "Charles T. Brooks days with activities exceeding 23.5 hours sorted by client name, docket and warrant". (Attachment #19)

On May 26, 2010 SI Cathey and Senior Assistant Attorney General Creighton Waters reviewed Attorney Charles Brooks' case files referenced in Attorney Ballard's letter of May 14, 2010 (Attachment #18) which were those reflected in exhibit A & B of the October 2, 2009 letter to Charles Brooks from General Counsel Ryan. The review disclosed that most case files included a "privilege log", however the case files typically did not reflect specific times regarding specific action taken on the case. Some correspondence in the case files appeared to not have been reviewed on the dates noted as compared to the voucher. All letters in some of the case files were each charged at .10 or 6 minutes time. Correspondence in some files did not appear to have time charged on the vouchers for review or preparation and some telephone calls from outside agencies, appeals, substitution of counsel letters, continuing case correspondence, orders to the court and other correspondence did not appear to have time charged for their preparation when compared to the vouchers. There was insufficient information in the case files to determine if the vouchers were, in fact, filed correctly. (Attachment #20) new

On June 3, 2010, Tracy Garrett, Circuit Court Reporter, Coordinator for the Division of Court Administration, advised that circuit court reporters are not required to note the times of the beginning or ending of hearings and, although a monthly report is submitted by State salaried court reporters to Garrett, the report only lists travel times and dates in court but nothing to note case names, times of hearing, trials or other legal matters. (Attachment #21)

In June 2010, various federal correctional institutions were contacted and records were received in an attempt to determine if visits and travel times claimed on vouchers regarding inmates visited at federal correctional institutions by Charles Brooks could be corroborated. After checking all available records, the institutions could find no evidence, other than visitation logs, of visitation by Attorney Brooks on the dates specified. Their records provided the following information:

On 9-15-07 Brooks claimed on voucher #6027 that he spent an hour of visitation and 4 hours of travel to see inmate Philip Gilliard at Lieber Correctional Institute and on voucher #6028 he noted he spent 2 hours visiting and 2 ½ hours in travel to visit inmate Samuel Wilder at Lieber, however, Lieber's correctional log reflects that Brooks signed in at 2:55 p.m. but there is no record of when

↳ what time would
all have to be
out

he signed out or any other information regarding that visit.

On voucher 8055 Brooks claimed that on June 26, 2007 he spent 2.1 hours in visitation and 2.4 hours traveling to Lieber to visit inmate Adriane Johnson, however, Lieber's logs reflect no visitation by Brooks on that date. *- no visit*

On voucher 7063 Brooks claimed that on March 6, 2008 he visited inmate Jalal Beyah at Lieber for 1.7 hours plus 3.9 hours travel time, however, Lieber's sign-in and sign-out logs are not available for that date. *not available*

On voucher 5961 Brooks claimed that on 9-10-07 he spent .8 or 48 minutes with 2 hours travel time visiting inmate Tyrone Lewis at Lee Correctional Institution and on voucher 8460 submitted 11-26-07 noted that he spent 1.1 hours visiting and 1.0 hours travel to see inmate James Hornsby at Lee. Lee sign-in and sign-out records reflect no visitation by Brooks on those dates. *no visit*

On voucher 12158 dated 12-4-07, Brooks claimed that he spent 1.5 hours visiting and 5 hours traveling to McCormick Correctional Institution to visit inmate Rashamel Broadus and also for this same date claimed reimbursement on voucher 12162 for a 1.5 hour meeting with inmate Stacey Pringle at McCormick. McCormick's visitation logs reflect that Brooks signed in on 12-4-07 at 3:32 p.m. and signed out at 4:10 p.m., a period of 38 minutes. (Attachment #22) *38 minutes → 3 hr visit*

On June 29, 2010, Public Defender Jack Howle, Jr., Sumter, SC, advised that in 2007 Attorney Charles Brooks was handling all the probation violations in the Sumter area and court for these violations was always held on Friday. There were some complaints that Brooks was doing all the probation violations but he was not seeing all the defendants prior to the hearings. Brooks had to stop between hearings to consult with defendants and it was creating a court backlog. General Counsel Ryan of SCCID mentioned to Howle that SCCID was concerned about the court backlog and also with the amount of reimbursement money claimed by Brooks on his vouchers.

The Indigent Defense Act was passed in the latter part of 2007 and beginning January 2008, 8 of the 16 judicial circuits created public defenders of which Howle was one. General Counsel Ryan asked Howle's office to take over the representation of indigent clients at probation hearings in the Sumter Judicial District and OID would accept vouchers from Howle's office. Howle's office began handling all the indigent probation violations and submitting vouchers to OID. Howle learned from OID that the vouchers submitted by his office represented less in claimed reimbursements than those submitted by Attorney Brooks' office. Howle subsequently became concerned about his office submitting vouchers for their indigent work and transferred all indigent probation violation cases to Public Defender David Sullivan. Sullivan was a State employee and therefore, did not submit vouchers for reimbursement. *voucher sent Howle*

Howle believes PCR hearings are held about twice a year. Court Administration schedules PCR hearings in Sumter and they may have a record of the dates and the judges assigned. The county clerk may also have the dates of PCR hearings, however, public defenders don't have to account for their time and don't keep records of the time spent at hearings. Howle added that PCR hearings normally last 15 to 20 minutes but some can go on for hours. Judges are usually at PCR hearings for about 4 hours during the day, however, Howle knows of no record kept for the actual time of the hearings other than if court reporters keep a record and note the time in transcripts. *PCR scheduled*

In the summer of 2009, Howle had a conversation with Attorney Brooks and he commented to Brooks that he heard there were issues with Brooks' voucher submissions and that the time claimed for reimbursement of indigent clients might be too much. Howle suggested to Brooks that he might want to closely check his vouchers, however, Brooks didn't show any concern regarding Howle's comments. Howle remarked that he has never seen Attorney Brooks' wife in a criminal courtroom in Sumter. Howle has not reviewed any voucher submissions by Attorney Brooks and has no independent knowledge of any time being inflated by Brooks. (Attachment #23) *no concern over the vouchers*

On July 21, 2010, Sumter Probation Agent Angela Levy advised that she has been the court probation agent handling court duty in Sumter, SC for approximately two years. Probation hearings are usually held on three Fridays a month during General Sessions Court and Agent Levy is the court agent, who calls the roll. She also checks in the defendants at court each morning at approximately 8:30 to 9:00 a.m. After roll call, attorneys speak with clients, however, there is no sign-in log kept identifying which attorneys speak with a defendant. Court usually begins at 9:00 to 9:30 a.m. and Agent Levy calls each hearing.

Defendants, with their attorney, plead their cases before the judge and hearings can go from 6 min. to 15 or 20 minutes. If the judge needs to further review the matter, the judge may have the attorney sit at the side and then call them later to discuss the case. In some cases the judge will ask the attorney and defendant to come to his chambers after court to discuss the issues. Agent Levy is familiar with Attorney Charles Brooks and considered Brooks a Public Defender. At approximately 12:00 p.m., if the judge completes court, Agent Levy gets the clerk to clock in all the orders and entries are made as to the hearing date and will show what date the hearing occurred, who the judge was, what the sentence was or the decision of the court. The data base does not indicate the attorney, only that the hearing was conducted and the outcome. Agent Levy did not keep records as to who the court reporter was on probation violation cases until early 2010.

Agent Levy reviewed an OID printout entitled "Charles T. Brooks Days With Activities Exceeding 12 Hours, Sorted By Client Name, Docket, and Warrant" regarding the cases held in Sumter and compared the printout with her computer data base. Approximately 40 - 45 cases were compared and all reflected that the hearings occurred on the date or within one day as listed in the OID printout. However, there could be no determination regarding the time those hearings began or ended. (Attachment #24) *all hearings within 1 day*

On July 21, 2010, Pam Haynesworth, Deputy Clerk of Court, Criminal Records, Sumter, County, advised that she has been the Deputy Clerk of Court for approximately 20 years in the criminal records section. She is not aware of any records kept in the court system regarding the beginning or ending times of court. There is a General Sessions Court schedule for the Third Circuit that would show the dates of General Sessions Court hearings, location and the judge assigned however, judge assignment may change prior to the hearing. Haynesworth did not have a copy of the schedule. (Attachment #25) *Can't determine the time*
no time

On July 21, 2010, Sumter County Family Court Documents and Research Clerk Ann

Windham reviewed her computer data base in comparison with the OID printout entitled "Charles T. Brooks Days With Activities Exceeding 12 Hours, Sorted By Client Name, Docket, and Warrant". Windham's comparison disclosed that all the 10 cases reviewed reflected that the hearings occurred on the dates specified in the printout and Attorney Charles Brooks represented each defendant. There is no information regarding the start and ending time of the hearings. (Attachment #26)

On July 21, 2010, Third Judicial Circuit Solicitor C. Kelly Jackson advised that he is not aware of any record kept of the exact time hearings start or end in General Sessions or other solicitor cases heard in the Sumter County Court system. Individuals attorneys in the solicitor's office may note the day, the name of the judge and the results of the hearing on the case file. Solicitor Jackson provided copies of the General Sessions Court schedule for the Third Judicial Circuit for January thru December 2005, 2006, 2007, 2008 and 2009 which reflects the court date, the county where court was held and the assigned judge. Solicitor Jackson further advised that court times or judges may have changed due to conflicts or schedule changes. Solicitor Jackson is not aware of any record kept by his or any other office indicating when court began or ended. (Attachment #27)

no time record by court

On July 21, 2010, Sumter County Clerk of Court James C. Campbell advised that he is responsible for the conduct of criminal and civil court in Sumter County. There are no specific records kept in the Sumter County Clerk of Court's Office regarding the time a judge takes the bench or leaves the bench and only the court reporter might have that information. Campbell is present when probation and other type hearings are conducted by the court and, during those hearings, the judge typically spends between 15 and 25 min. average on each case. Once or twice Campbell has seen court go as late as 4:00 or 5:00 p.m. but court is usually over by 12:00 or 1:00 p.m. Campbell's experience has been that attorneys talk with inmates prior to, during and after hearings. The clerk's office does not keep records of when hearings begin or end and it is atypical for judges to keep notes on start and end times of hearings.

no time record by court

The chief transporter from the Sumter Jail is Raymond Haynesworth. Campbell provided copies of logs by courtroom which are kept by the Clerk of Court's Office for guilty pleas and trials held each day during a 3 week term of court. The logs reflect the judge's name, court reporter's name, defendant and whether or not it is a plea or trial, the case number, the offense, the sentence and verdict. In the case where a verdict is rendered by a jury, the date and time when the verdict was received is recorded but times are not recorded for any other cases. There are no logs maintained for probation violations which are typically held on Friday. In some cases judges will ask the attorney to wait while they reach a decision and then come back to the attorney after hearing other cases. Sometimes the judge asks the attorney and defendant to meet with the judge in his chambers. There are no other records kept by the clerk of court's office regarding the time that a hearing begins or ends. (Attachment #28)

On July 22, 2010, Sumter County Detention Center Corporal Raymond Haynesworth advised he has been employed by the detention center for approximately 36 or 37 years. A log is kept of when inmates leave the detention center and return. The log is signed by inmates and is maintained

in the inmates records which are maintained for approximately 10 years at the center. Inmates are transported to the Sumter and Lee County Courthouses and arrive on probation hearing days at approximately 8:30 a.m. There are two interview rooms for inmate meetings with their attorneys and there is also a jury room where they can meet. There is no record kept regarding the time an attorney talks with their clients in court. Although probation hearings start around 9:00 a.m. they usually don't last a full day, typically ending around 2:00 to 3:00 p.m. When hearings and inmates' meetings with their attorneys are completed, Haynesworth and his staff return the inmates to the jail and sign them in. If an attorney meets with an inmate at the detention center, sign-in, sign-out log is kept of the attorney's visit, however, if an attorney is seeing more than one inmate, they may only write one or two names in the log. Captain Ray Lee maintains the inmate records and the visitation sign-in sign-out logs at the detention center. She also maintains the inmate's booking reports. (Attachment #29)

On October 13, 2010, after reviewing an OID printout entitled "Days with activities exceeding 12 hours sorted by client name, docket and warrant" Sumter County Detention Center Capt. Theresa Ray-Lee was able to determine that 29 of the persons listed on the printout were inmates at the detention center. She advised that, after a thorough search of Detention Center records, she was able to provide temporary custody receipts for the 29 inmates who were inmates at the detention center between April 14, 07 thru April 19, 08, along with booking reports, minister, vendor, attorney and other official sign-in sheets beginning July 18, 2007 thru Sept. 14, 2007 and regular visitor sign-in sheets for 9-14-07 thru 11-16-07. A number of sign-in and sign-out logs could not be located and, of the 29 persons, who were inmates during those time periods, they could not locate the files of 4 inmates. Attorney Charles Brooks has been a regular visitor at the detention center over the last several years when he handled indigent defense cases, however, Capt. Ray-Lee could not be specific as to the number of times Attorney Brooks visited the detention center but she believes it was at least 2 or 3 times a month. There are no detention center records regarding whether or not an attorney meets with an inmate while at court but that is a frequent process. (Attachment #30)

On April 2, 2010, General Counsel Ryan, SCCID, and on Aug. 11, 2010, as well as other dates, provided various printouts and vouchers, which were analyzed prior to the preparation of this report, however, they are not included in this report due to their voluminous nature and do not specifically add anything in addition to the printouts provided. General Counsel Ryan also advised that there were no amended vouchers attached to Attorney Charles Brooks' October 5, 2009 letter to him and General Counsel Ryan has never seen any amended vouchers for Exhibit A and B as attached to his October 2, 2009 letter to Attorney Brooks. General Counsel Ryan also advised that it is permissible for indigent case vouchers to be submitted under the name of the court assigned attorney even though the work was performed by other attorneys in the law office.

Attachments

1. Copies of SCCID reports, including those received January 22, 2010, from SCCID/OID.
2. Correspondence from Attorney Desa Ballard, from Attorney Brooks to SCCID and from SCCID to the Office of Disciplinary Council to SI Cathey and AAG Creighton Waters.
3. January 11, 2010 interview of SCCID/OID employees.
4. January 14, 2010 interview of Judith L. McCool.
5. January 14, 2010 interview of Trina Jenkins.
6. January 22, 2010 interview of Scheherazade Charles.
7. September 30, 2010 interview of Dionne Deese Council.
8. February 8, 2010 Agent Work paper on Attorney Charles T. Brooks' real estate and SCDOR taxes.
9. February 11, 2010 interview regarding conversation with Attorney Desa Ballard.
10. April 1, 2010 interview of documents provided by SCCID/OID.
11. March 20, 2010 transcribed interview of Charles T. Brooks, III.
12. April 12, 2010 memorandum and transcribed 4-1-10 interview of Charles T. Brooks, III.
13. April 6, 2010 memo regarding documents received from Ryan Cole, SCCID.
14. April 19, 2010 memo of letter from Attorney Harvey Watson.
15. April 27, 2010 memo and transcribed interview of Attorney Irma Brooks.
16. May 5, 2010 memo of records received from Ryan Cole, SCCID/OID.
17. May 6, 2010 memo of documents received from Ryan Cole, SCCID/OID.
18. May 17, 2010 memo of Attorney Desa Ballard's correspondence.
19. May 21, 2010 memo regarding records from Ryan Cole, SCCID/OID.
20. May 26, 2010 memo of review of Attorney Brooks' case files.
21. June 3, 2010 interview of Circuit Court Reporter Coordinator Tracy Garrett.
22. June 2010 memorandum of agent's work product and records received regarding federal correctional institution visits by Charles Brooks.
23. June 29, 2010 interview of Sumter County Public Defender Jack D. Howle, Jr.
24. July 21, 2010 interview of Sumter Probation Agent Angela Levy.
25. June 21, 2010 interview of Sumter Deputy Clerk of Court Pam Haynesworth.
26. July 21, 2010 interview of Sumter County Family Court Document and Research Clerk Ann Windham.
27. July 21, 2010 interview of Third Judicial Circuit Solicitor C. Kelly Jackson.
28. July 21, 2010 interview of Sumter County Clerk of Court James Campbell.
29. July 22, 2010 interview of Sumter County Detention Center Corporal Raymond Haynesworth.
30. October 13, 2010 interview and receipt of documents from Sumter-Lee Regional Detention Center Capt. Theresa Ray-Lee.
31. April 2, 2010 & Aug. 11, 2010 memos of records supplied by SCCID/OID.

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

**DEFENDANTS' ANSWERS TO
INTERROGATORIES**

TO: THE PLAINTIFF ABOVE NAMED AND HIS ATTORNEY:

1. Give the names and addresses of persons known to the Defendants or its counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

- (1) J. Hugh Ryan, III
Deputy Director and General Counsel
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (2) T. Patton Adams
Executive Director
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (3) Lisa A. Campbell
Assistant Director
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211

No written or recorded statements.

- (4) Kathy Bonds
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (5) Lori Frost
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (6) Donna Bridges
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (7) Jean Tinder
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (8) Ryan L. Cole
Database Specialist
South Carolina Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211
No written or recorded statements.
- (9) Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150
No written or recorded statements.
- (10) Irma R. Brooks, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter, SC 29150
No written or recorded statements.

- (11) Bob Cathey
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211
No written or recorded statements.
- (12) Any and all employees of the Law Offices of Charles T. Brooks, III from January 1, 2007 to present.
- (13) Any and all witnesses identified in the Plaintiff's discovery responses.
- (14) Any and all witnesses identified or referenced during depositions in this lawsuit.
- (15) Any record custodians where a Subpoena *Duces Tecum* has been issued.
- (16) Any and all attorneys who paid a "referral fee" to the Plaintiff to assume representation of a Rule 608 appointment from 2007 to present.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Defendants that relate to the claim or defenses in the case.

RESPONSE:

- (1) All vouchers prepared and submitted to the South Carolina Commission on Indigent Defense that were prepared by the Plaintiff. Upon information and belief, those are in the possession of the Plaintiff. Should the Plaintiff's attorney desire a copy Defendant will be happy to produce the same at Plaintiff's expense.
- (2) Email communication between Hugh Ryan and Charles T. Brooks from August 24, 2009 through September 21, 2009.
- (3) Letter from T. Patton Adams to Ms. Lesley Coggiola dated September 2, 2009.
- (4) Letter from Sabrina C. Todd to T. Patton Adams dated September 4, 2009.
- (5) Letter from T. Patton Adams to Ms. Lesley Coggiola dated October 6, 2009.

- (6) Correspondence from Hugh Ryan to Judge Gordon B. Jenkinson regarding resolving the fees in the case of SCDSS v. Janice Cooper and Stanley Epps
- (7) Correspondence from Irma Brooks to Hugh Ryan dated September 12, 2011 in response to Hugh Ryan's correspondence of July 28, 2001 regarding Janice Cooper Voucher- C-2007-00003 and Stanley Epps Voucher- E-2007-00091.
- (8) Correspondence from Irma Brooks to Hugh Ryan dated October 5, 2011 regarding Janice Cooper Voucher- C-2007-00003
- (9) Correspondence from Hugh Ryan to Judge Gordon B. Jenkinson regarding SCDSS v. Janice Cooper and Stanley Epps dated August 5, 2009.
- (10) Correspondence from Hugh Ryan to Judge Howard King and Charles T. Brooks, III regarding Stephen Homes Voucher dated September 30, 2009.
- (11) Correspondence from Hugh Ryan to Charles T. Brooks regarding voucher status dated October 2, 2009.
- (12) Correspondence from Charles T. Brooks to Hugh Ryan regarding vouchers dated October 2, 2009.
- (13) Memorandum from Judge Howard P. King of the Circuit Court of the Third Judicial Circuit regarding Stephen Holmes dated October 2, 2009.
- (14) Correspondence from Charles T. Brooks to Hugh Ryan regarding vouchers dated October 5, 2009.
- (15) Correspondence from Hugh Ryan to Charles T. Brooks regarding vouchers dated October 7, 2009.
- (16) Correspondence from Desa Ballard to Hugh Ryan regarding case number 09-DE-L-1047 (Adams) dated December 9, 2009.
- (17) Correspondence from Desa Ballard to members of the South Carolina Commission on Indigent Defense regarding a confidential matter dated January 20, 2010.

- (18) Correspondence from Harry A Dest to Desa Ballard regarding the confidential matter dated February 4, 2010.
- (19) Correspondence from Desa Ballard to Harry A. Dest regarding confidential matter dated February 10, 2010.
- (20) Correspondence from S. Creighton Waters, Senior Assistant Attorney General to Desa Ballard regarding the matter of Charles T. Brooks, III dated February 17, 2010.
- (21) Correspondence to S. Creighton Waters from Desa Ballard regarding Charles T. Brooks, III dated February 25, 2010.
- (22) Correspondence to Hugh Ryan from S. Creighton Waters regarding Desa Ballard's reason for cancelling meeting dated March 3, 2010.
- (23) Correspondence to Hugh Ryan from Harvey M. Watson, III regarding case number 09-DE-L-1047 (Adams) dated May 11, 2010.
- (24) Correspondence from Hugh Ryan to Harvey M. Watson, III regarding the Matter of Charles T. Brooks dated June 21, 2010.
- (25) Correspondence to T. Patton Adams from Harvey M. Watson, III regarding the Matter of Charles T. Brooks, III, Esquire (Adams), Case No. 09-DE-L-1047 (Adams) dated July 20, 2011.
- (26) Correspondence from Sabrina C. Todd with the Office of Disciplinary Counsel to T. Patton Adams regarding Notice of Final Disposition dated August 1, 2012.
- (27) Correspondence from Harvey M. Watson, III to T. Patton Adams regarding the Matter of Charles T. Brooks dated August 22, 2011.

3. Furnish the name, address, place of employment and qualifications of each and every expert witness the Plaintiff plans to call at the trial of this case. As to each person named in response to this interrogatory, state:

RESPONSE: Professor Nathan Crystal

- a. The subject matter on which the expert or experts are expected to testify; He expected to testify on ethics issues relating to the Plaintiff's submissions of invoices.
 - b. The substance of the facts and opinions to which each of the experts named in response to the preceding interrogatory is expected to testify; Professor Crystal will testify as to the violations of Rules of Professional Conduct by the Plaintiff. He will also testify that the Plaintiff's acceptance of a referral fee is compensation per the Rules of Professional Conduct in that his opinion the Defendant should legitimately offset that "referral fee" from the total bill of the Plaintiff submitted pursuant Rule 608, the Supreme Court Orders and the Guidelines of the South Carolina Commission on Indigent Defense.
 - c. Furnish a summary of the ground for each opinion expected to be elicited from each of the experts named in response to this interrogatory. The Plaintiff can elicit all grounds for each opinion by taking the deposition of Professor Crystal. Your Defendants reserve the right to provide additional grounds as discovery develops. Nonetheless, your Defendants understand that Professor Crystal's grounds for each opinion in based upon the Rules of Professional Conduct, statutory guidelines concerning the payment of fees for indigent representation, Rules and Procedures of the South Carolina Commission on Indigent Defense and Orders issued by the South Carolina Supreme Court concerning Rule 608 appointments and the payment of the same by the South Carolina Commission on Indigent Defense.
4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

- RESPONSE: (1) Patton Adams is the Executive Director of the office of the South Carolina Commission on Indigent Defense. He is expected to testify to the number of vouchers that were submitted by the Plaintiff and the discrepancy discovered in the vouchers. He also will testify as to the unreasonableness of some of the vouchers as well as the damages incurred by your Defendant.
- (2) Hugh Ryan, III is the Deputy Director and General Counsel for the South Carolina Commission on Indigent Defense. He is expected to testify to the number of vouchers that were submitted by the Plaintiff and the discrepancy discovered in

the vouchers. He also will testify as to the unreasonableness of some of the vouchers as well as the damages incurred by your Defendant.

- (3) Lisa Campbell is the Assistant Director for the South Carolina Commission on Indigent Defense. She is expected to testify to the number of vouchers that were submitted by the Plaintiff and the discrepancy discovered in the vouchers. She also will testify as to the unreasonableness of some of the vouchers as well as the damages incurred by your Defendant.
- (4) Ryan Cole is the Database Specialist for the South Carolina Commission on Indigent Defense. He has reviewed all of the vouchers and categorized them in a database which is being provided herein.
- (5) Kathy Bonds, Lori Frost, Donna Bridges and Jean Tinder are all employees of the South Carolina Commission on Indigent Defense. They reviewed vouchers of the Plaintiff and will testify concerning the facts and circumstances in reviewing those vouchers.
- (6) Charles T. Brooks, III is the Plaintiff in this case and will presumably testify as to vouchers that were submitted to the South Carolina Commission on Indigent Defense as well as money received from other attorneys assumed by Rule 608 appointment.
- (7) Irma Brooks is a lawyer with the law firm of Charles T. Brooks, III and will testify concerning work done on cases in which the Plaintiff assumed representation pursuant to Rule 608.
- (8) Bob Cathey is an Investigator with the South Carolina Attorney General's Office.

5. If the Defendant(s) is/are improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

RESPONSE:

The Defendants are properly identified although your Defendants object to the Office of Indigent Defense being a named Defendant.

6. Identify all third parties to whom Defendants have sent written communication seeking information regarding funds paid by those third parties to Plaintiff in connection with Plaintiff's assumption of duties of representation for indigent clients.

RESPONSE: Please see attached list in responses to Plaintiff's Request for Production.

7. Identify all South Carolina licensed attorneys, other than Plaintiff, about whom Defendants have sent written communication seeking information regarding funds paid to that attorney in connection with that attorney's assumption of duties of representation for indigent clients from prior appointed counsel.

RESPONSE: Please see attached list in responses to Plaintiff's Request for Production.

8. Identify all communications made by and between Defendants and the Office of Disciplinary counsel, including its attorneys and support staff, regarding Plaintiff since Defendants first contacted any third party regarding possible overbilling by Mr. Brooks.

RESPONSE: See attached Response to Plaintiff's Request for Production Number 7.

9. Identify all communications made by and between Defendants and the Office of Disciplinary counsel, including its attorneys and support staff, regarding any licensed South Carolina attorney, other than Plaintiff, since September 1, 2009.

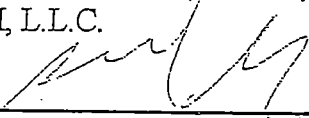
RESPONSE: Defendants object to this as it is not relevant to this action, as well as create embarrassment and oppression of third parties

10. Identify all communications made by and between Defendants and the Office of Attorney General, including its attorneys and support staff, regarding Plaintiff since Defendants first contacted any third party regarding possible overbilling by Mr. Brooks.

RESPONSE:

Your Defendants had an initial meeting with John McIntosh at the Attorney General's Office in the Fall of 2009. There were also status updates with Bob Cathey and Creighton Waters of the South Carolina Attorney General's Office.

LEE, ERTER, WILSON, JAMES, HOLLER
& SMITH, L.L.C.



G. MURRELL SMITH, JR.
126 N. MAIN STREET/POST OFFICE BOX 580
SUMTER, SOUTH CAROLINA 29151
(803) 778-2471/(803) 778-1643 (FAX)
murrell@leeandmoise.com

December 14, 2012.

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

126 North Main Street
Post Office Box 580
Sumter, South Carolina 29151

Robert W. Brown
Of Counsel

*Licensed in SC, NC & GA
†Certified Family Court Mediator
‡Certified Circuit Court Mediator

Telephone: (803) 778-2471
Facsimile: (803) 778-1643

October 15, 2014

Email Address: murrellsmith@leeandmoise.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.

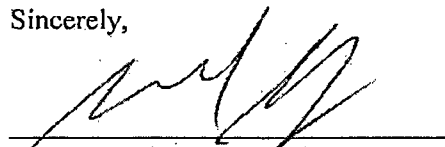
The only addition I had in this Order was that if the Plaintiffs do not retain the services of new counsel within 45 days, then the Plaintiff could continue to represent himself but shall not be allowed to testify as a witness at Trial. I presume the Court does not intend to allow the Plaintiff to substitute 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)

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

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Craig D. Brown, Circuit Court Judge

Appellate Case No: 2014-002477

Charles T. Brooks, III.....Appellant

v.

South Carolina Commission  
on Indigent Defense and Office  
of Indigent Defense.....Respondent

RECORD ON APPEAL

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Irma R Brooks

Irma R. Brooks  
Post Office Box 3512  
Sumter, South Carolina 29150  
803-418-5708  
Attorney for Appellant

Sumter, South Carolina

RECEIVED

JUL 06 2015

SC Court of Appeals