

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

D. Craig Brown, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

29  
APR 30 2016 JJ.

**SC SUPREME COURT**

GREGORY DANIELS,

PETITIONER,

V.

SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2015-002033  
\_\_\_\_\_

MOTION FOR APPOINTMENT  
OF OUTSIDE COUNSEL  
\_\_\_\_\_

Undersigned counsel respectfully moves this Court to appoint outside counsel to represent Petitioner Daniels in his appeal of the denial of post-conviction relief (PCR) based on a conflict of interest or the appearance of a conflict of interest.

**Procedural history**

Petitioner was convicted of murder and sentenced to life imprisonment without the possibility of parole. State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). Petitioner's convictions and sentences were affirmed on appeal. Id. Thereafter, Petitioner filed an application

for PCR. The matter proceeded to an evidentiary hearing before the Honorable D. Craig Brown. Tricia Blanchette represented Petitioner, and J. Croom Hunter represented Respondent. By an order filed on June 10, 2015, Judge Brown denied Petitioner relief from his convictions and sentences. Petitioner moved for entry of new judgment and/or to amend the findings of fact and conclusions of law. By an order filed on August 24, 2015, Judge Brown denied Petitioner's post-trial motion. Petitioner filed a timely notice of appeal. Thereafter, his case was assigned to undersigned counsel.

**Relevant facts**

Petitioner strongly thinks an issue raised at the PCR hearing should be raised on appeal; however, counsel does not agree the issue has merit. Counsel discussed this issue with the Chief Appellate Defender, who agrees the issue does not have merit. The matter is complicated because the issue involves one of counsel's former clients. Counsel disclosed her prior representation of the individual to Petitioner as well as her evaluation of the issue Petitioner requests be included on appeal. After learning of counsel's prior representation of the individual and of counsel's evaluation of the issue, Petitioner informed counsel that he considers counsel's continued representation of him to be a conflict of interest. The Chief Appellate Defender cannot simply re-assign the case and ask another Appellate Defender to brief an issue that counsel and the Chief Appellate Defender do not think is meritorious. Therefore, given the client's assertion that counsel is operating under a conflict of interest or the appearance of a conflict of interest given her past representation of a client who is inextricably intertwined with the disputed issue, counsel respectfully requests this Court appoint outside counsel to represent Petitioner in his appeal.

**Law and Analysis**

Under the Rules of Professional Conduct, “[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in

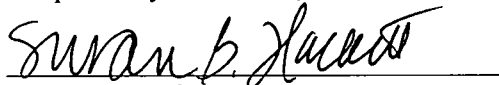
which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Rule 1.9(a), RPC, Rule 407, SCACR. The Rule further prohibits a lawyer who has formerly represented a client in a matter from using information relating to the representation to the disadvantage of the former client or reveal information relating to the representation. Rule 1.9(a), RPC, Rule 407, SCACR. Additionally, Rule 1.7(a)(2) of the Rules of Professional Conduct explains that a lawyer has a concurrent conflict of interest if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client."

Due to the highly unusual facts of this case, a conflict of interest or the appearance of a conflict of interest exists between counsel's current client and her former client. In light of the evaluation of the merits of the claim, the case cannot be reassigned to another Appellate Defender in the office in the opinion of the Chief Appellate Defender.

### **Conclusion**

Undersigned counsel respectfully requests the appointment of outside counsel to represent Petitioner in the appeal of the denial of PCR. Further, counsel respectfully requests the timelines for filing the petition for writ of certiorari and appendix be held in abeyance pending consideration of this motion.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender

Attorney for Petitioner

This 29<sup>th</sup> day of April, 2016.

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**SC SUPREME COURT**

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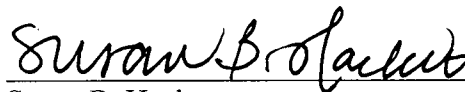
SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2015-002033  
\_\_\_\_\_

CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, J. Croom Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Gregory Daniels at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 29<sup>th</sup> day of April, 2016.



\_\_\_\_\_  
Susan B. Hackett  
Appellate Defender  
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 29<sup>th</sup> day of April, 2016.

 (L.S.)

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 29, 2016

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APR 29 2016  
SC SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Gregory Daniels v. State of South Carolina, Appellate Case No. 2015-002033

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett  
Appellate Defender

SBH/

Enclosure

cc: J. Croom Hunter, Esquire  
Gregory Daniels