

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

D. Craig Brown, Circuit Court Judge

RECEIVED

MAY 12 2016

SC SUPREME COURT

GREGORY DANIELS,

PETITIONER,

V.

SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2015-002033

REPLY TO RESPONDENT'S RETURN
TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

On April 29, 2016, undersigned counsel moved 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. On May 9, 2016, Respondent filed a return opposing the motion. Counsel now files this reply.

Respondent posited that no conflict of interest exists in this case. Ret. at 4. Respectfully, undersigned counsel disagrees. The motion to appoint outside counsel was crafted carefully so as to avoid revealing conversations protected by the attorney-client privilege and information protected

by the confidentiality provisions of the Rules of Professional Conduct. A conflict of interest exists in the case because of the type of issue presented in Petitioner's case and the involvement of one of counsel's former clients in that issue. As stated in the motion, counsel's former client is "inextricably intertwined" with an issue in Petitioner's case.

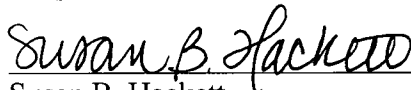
Due to the nature of the claim presented and counsel's representation of a former client in the same or substantially related matter, there is a significant risk that counsel's representation of Petitioner will be materially limited by counsel's responsibilities to her former client. See Rule 1.7(a)(2), RPC, Rule 407, SCACR; Rule 1.9(a), RPC, Rule 407, SCACR. Counsel does not make the request for the appointment of outside counsel lightly. It was only after consultation with the Chief Appellate Defender, a review of the Rules of Professional Conduct, a review of the case law interpreting the relevant Rules of Professional Conduct, a review of the case law governing attorney-client privilege, and communication with Petitioner that counsel determined the request was necessary. Respondent makes a "floodgates" argument that future clients will abuse the system to conflict out the Office of Appellate Defense by making specious claims. See Ret. at 4. While this argument may have superficial appeal, it quickly falls apart. This Court does not have to be concerned about any "floodgates" because requests for the appointment of outside counsel are made sparingly and only after great thought and mandated consultation with the Chief Appellate Defender.

Finally, while counsel finds Respondent's deference to counsel's determination regarding meritorious issues flattering, the compliment appears disingenuous considering Respondent's refusal to defer to counsel's judgment concerning the conflict of interest and the necessity of the appointment of outside counsel. Counsel does not dispute that she and the Chief Appellate Defender are "two of the brightest and most experienced minds in the state" as stated by

Respondent. See Ret. at 4. In fact, the two have used their experience, which includes undersigned counsel's previous employment as an assistant disciplinary counsel and service on the Professional Responsibility Committee of the South Carolina Bar for almost a decade and the Chief Appellate Defender's experience as an appellate defender for almost thirty years, to determine that a conflict of interest exists and that the appointment of outside counsel is necessary. The point of the conflict rules is that Petitioner is entitled to the judgment of counsel unburdened by the duties of prior representation in selecting and briefing his issues. The ability (or lack thereof) of counsel cannot substitute for this conflict-free judgment.

In conclusion, undersigned counsel respectfully requests the appointment of outside counsel to represent Petitioner in the appeal of the denial of PCR. If this Court requires more information concerning this matter, counsel is willing to file a supplemental motion under seal at this Court's request.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

Attorney for Petitioner

This 12th day of May, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

D. Craig Brown, Circuit Court Judge

GREGORY DANIELS,

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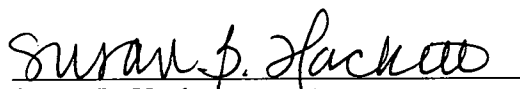
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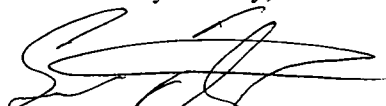
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Reply to Respondent's Return to 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 12th day of May, 2016.



Susan B. Hackett
Appellate Defender
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 12th day of May, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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

May 12, 2016

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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 Reply to Return to 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