

# SOUTH CAROLINA LAWYERS WEEKLY

## The Beatty Brawl

By: Phillip Bantz December 9, 2013

South Carolina Supreme Court Justice Donald W. Beatty's barbed speech during a solicitors conference may have shocked the audience – as well as worsened the already strained tensions between prosecutors and criminal defense lawyers – but the betting is that calls for his recusal will ultimately fail.

Solicitors throughout the state asked S.C. Attorney General Alan M. Wilson to request Beatty's recusal after the now-embattled judge told a roomful of hundreds of assistant solicitors that the court had given them a free pass for too long and would begin disbaring them for their misdeeds.

Beatty also told attendees at the September conference in Myrtle Beach that he had enough votes on the court to defeat a pending piece of legislation that would let prosecutors keep the power to schedule criminal trials – a practice that the state Supreme Court has found to be unconstitutional.



While Beatty's remarks left solicitors dismayed and outraged, the S.C. Association of Criminal Defense Lawyers applauded his actions. The group, which represents more than 425 public and private defense attorneys, said in a statement that "it should concern all South Carolinians that the prosecutors in this state get so upset when they are reminded that they have an ethical duty not to win at any costs, but rather to administer justice."

Citing two cases within the past two years in which the state Supreme Court addressed solicitor misconduct, the defense group added that residents "would be better served if these 'outraged' solicitors would use Justice Beatty's remarks to clean up their own houses instead of assailing the integrity of a judge who has shown no sign of anti-prosecutor bias in his rulings."

First Circuit Solicitor David M. Pascoe Jr., who heads the S.C. Solicitors' Association and is among those who are spearheading the recusal effort against Beatty, described the defense group's backing of Beatty as "silliness" and accused the group of "playing a spin game by intentionally misrepresenting the facts."

"This is a very serious issue that deserves more than a carelessly put together press release by a few defense attorneys," Pascoe added. "Every defense attorney I have spoken to in the last couple of months shares the same concerns as I do with Justice Beatty's comments."

Ninth Circuit Solicitor Scarlett A. Wilson – who, along with Pascoe, sent letters to the state attorney general requesting Beatty's disqualification – also shot back at the defense group. Wilson said she doubted that "any decent lawyer supports the idea of a jurist publicly discussing matters pending before their court or offering advisory opinions as to the way they will rule on a matter which has yet to come before them."

In response to Pascoe and Wilson, the defense group stated that "we find nothing silly about addressing the public issue of prosecutors being reminded of their ethical duties by the judiciary."

### 'No basis whatsoever'

After the dustup at the conference, solicitors representing all but three of the state's 16 judicial districts began pushing to have Beatty disqualified from hearing any cases involving criminal matters, docket control issues or disciplinary actions against solicitors.

"Justice Beatty's comments have caused us to question his impartiality in ruling on criminal cases as well as ruling on grievances filed against prosecutors. One can only conclude after his remarks that he has an extreme bias against

prosecutors and cannot be objective," Pascoe wrote in a letter to Alan Wilson that included signatures from 11 other solicitors.

Wilson responded by telling solicitors that he shared their concerns about Beatty and would meet with them on Dec. 5 in Greenville to discuss the possibility of a recusal request. But his letter also indicated that disqualifying Beatty would be a challenge.

"Many courts, including South Carolina's appellate courts, have concluded that bias requiring recusal must be personal, as distinguished from judicial," Wilson wrote. "Our research thus far reveals that many courts have concluded bias or prejudice from an 'extrajudicial' source does not include knowledge or attitudes derived from prior judicial proceedings."

In other words, Wilson seemed to be telling solicitors that "we're still looking at this but so far everything we've found indicates the law does not support what you want to do," said Gregory B. Adams, a professor of legal and judicial ethics at the University of South Carolina School of Law.

Adams also believes that Beatty's alleged remarks about solicitor misbehavior and the docket control legislation cannot trigger recusal because they were either too general or stemmed from earlier court rulings.

"He [Beatty] seems very clearly to be reflecting an attitude that had grown in him in the years of hearing appeals where he had seen time after time problems of the conduct of prosecutors that eventually led him to believe they were not being effectively dealt with," Adams said.

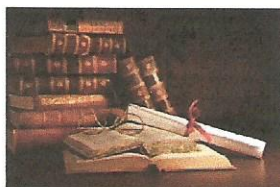
While Beatty spoke more specifically about docket control, Adams said those comments would also fail to support his disqualification as they grew out of the court's decision last year that the solicitor-controlled docket was unconstitutional.

"I think the attorney general has got it right in terms of what the case law says about recusal here," he said. "It seems to me that there's no basis whatsoever for a motion to recuse Justice Beatty."

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