

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

**SC WORKERS' COMPENSATION COMMISSION'S REPLY TO APPELLANTS'
RETURN TO MOTION TO DISMISS RESPONDENT SC WORKERS'
COMPENSATION COMMISSION AND MOTION FOR RELIEF OF COUNSEL**

By way of brief reply, the SC Workers' Compensation Commission asserts the following:

1. The Workers' Compensation Commission cannot be a party to a case in which it renders a judicial decision. The Commission is statutorily required to approve attorney fees in workers' compensation cases before an attorney receives payment of their fee. S.C. Code Ann. § 42-15-90(A)(2012, as amended). While acting in a judicial capacity a commissioner¹ shall, inter alia, "hear and decide matters assigned to the judge except those in which disqualification is required." Rule 3B(1), CJC, Rule 501, SCACR. The Code of Judicial Conduct specifically requires a judge

¹ Commissioners, though they are not Article V judges, are nonetheless bound by the Code of Judicial Conduct. See S.C. Code Ann. § 42-3-250 (2005).

to disqualify him or herself when the judge is a party to the proceeding. Rule 3E(1)(d)(i), CJC, Rule 501, SCACR. If, as the appellant suggests, the Commission were a party to attorney fee petition hearings, the Commissioners would all be ethically disqualified from hearing these proceedings despite the clear legislative directive that the Commission approve fees as a discretionary decision following independent and impartial review. The Commission has no legally cognizable interest in the outcome of this appeal of an attorney fee petition award and is not a party.

2. Appellants cite S.C. Ambulatory Surgery Center Ass'n, et al. v. SC Workers' Compensation Commission as support for denying the Commission's Motion to be dismissed as a party. S.C. Ambulatory Surgery Center Ass'n, et al. v. SC Workers' Compensation Commission, 389 S.C. 380, 699 S.E.2d 146 (2010). ASC is distinguishable from the case on review. It is undisputed that the Commission may be sued as a party defendant for its administrative actions.² It is also undisputed that this court would properly have jurisdiction over such a claim. ASC involved the Commission acting in its administrative capacity and was not a review of an award or other judicial decision of the Commission.

3. As a corollary to Appellant's assertion that the Commission is a party to this claim, Appellants also assert that the undersigned attorneys, serving in a judicial law clerk capacity in this matter, represent the Commission as a party litigant pursuant to Rule 264(a), SCRCF. That Rule provides "The attorneys and/or guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule."

² The South Carolina Workers' Compensation Commission is composed of a judicial department and an administrative department. S.C. Code Ann. § 42-3-10 (1986, as amended).

4. As previously alleged, the Commission was not a party litigant to its own Appellate Panel proceeding and, therefore, the undersigned were not attorneys in the court below under the rule. Neither Mr. Roberts nor Mrs. McRee made an appearance, filed letters of representation, or participated as litigants in the matter under review. The undersigned were merely court personnel as defined in the Terminology, CJC, Rule 501, SCACR, acting in accordance with Rule 3B(7)(c), CJC, Rule 501, SCACR. Therefore, they should be relieved as counsel.

5. Finally, at paragraph 5 of their Return, Appellants appear to confuse and attempt to combine this case under review with a separate and distinct lawsuit brought by Appellants against the State of South Carolina which is not under review.

6. On or about April 19th, 2018, Preston F. McDaniel and John M. Milling, acting *pro se*, filed a Motion for Temporary Restraining Order and a Declaratory Judgement Action naming the Commission as Defendants, for which Civil Action Number 2018-CP-16-0034 was assigned. That matter concluded pursuant to a Mediation Agreement executed on April 22nd, 2022. That Mediation Agreement resolved Civil Action No. 2018-CP-16-0034 in its entirety. Further, the Mediation Agreement contained a confidentiality clause whereby the parties agreed to keep the terms of the agreement confidential. It has no applicability to the appeal from the Workers' Compensation Commission's award currently pending before the Court of Appeals. The only matter before the Court of Appeals is Appellant's appeal from the final award of the Commission in WCC File No. 1307922.

CONCLUSION

Respondent has shown no legal authority that requires the Commission, an Administrative Tribunal, to participate in an appeal to the courts of its final decision it made in its judicial capacity.

The Commission moves to be removed as Respondent and the undersigned move to be relieved as counsel of record.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



J. Keith Roberts
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April 4th, 2023

DATE

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Apr 04 2023

SC Court of Appeals

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SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

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PROOF OF SERVICE


I, the undersigned counsel for the Workers' Compensation Commission, hereby certify that I have served a copy of the Commission's Reply to Appellants' Return to Motion to Dismiss Respondent SC Workers' Compensation Commission and for Relief of Counsel by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, and via email, addressed to the Appellant and Court as listed below.

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
ctappfilings@sccourts.org

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APR 14th, 2023



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SC Court of Appeals

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Workers' Compensation Commission

April 4th, 2023

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201
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Re: Pamela Cartee v. SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants, IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants, v. SC Workers' Compensation Commission, Respondent.
Appellate Case No. 2023-000187
WCC File No. 1307922

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the South Carolina Workers' Compensation Commission's Reply to Appellants' Return to our Motion to Dismiss Respondent SC Workers' Compensation Commission and Motion for Relief of Counsel which I would appreciate your filing with the court.

By copy of this letter to Preston F. McDaniel and John M. Milling, Appellants pro se, I am hereby serving them with copies of our Reply. Please see the attached Certificate of Service.

If there is anything further the Court requires from the Commission at this time, do not hesitate to ask.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Roberts".

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure

Cc: Preston F. McDaniel (Via US Mail and email)
John M. Milling (Via US Mail and email)