

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel

Appellate Case No.: 2013-001796

RECEIVED

SEP 09 2013

Clayton Sims.....Appellant,

SC Court of Appeals

v.

A&D Environmental Services, Inc., Employer and Chubb Indemnity Insurance Company,
Carrier,.....Respondents.

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO HOLD THE
APPEAL IN ABEYANCE

NOW COME THE RESPONDENTS, by and through counsel, and pursuant to Rule 240 of *The South Carolina Appellate Court Rules* and in response to Appellant's Motion to Hold The Appeal in Abeyance, the Respondents seek dismissal of Claimant's appeal. In support of said Return, the Respondents state the following:

1. The Respondents received Appellant's Notice of Appeal on August 22, 2013. Shortly thereafter, on August 26, 2013, Respondents received Appellant's Motion to Hold the Appeal in Abeyance.
2. From a procedural standpoint, the Respondents refer this Court to Rule 240(c) of *The South Carolina Appellate Court Rules* as authority for **dismissing** Appellant's Motion. The rule states that "Each motion or petition *shall* include the following...(2) A memorandum with citation of authorities in support of the motion." Rule 240 (c), SCACR (*emphasis added*). Appellant cites absolutely no authority in support of his motion. As such, Appellant's Motion should be dismissed.
3. From a substantive standpoint, Appellant's Motion requests that the Court make a ruling as a matter of law and declare that the July 22, 2013 Decision & Order of the Appellate Panel is not a final order from which an appeal can be properly prosecuted. Such a declaration is in and of itself an issue that is on the merits. *See generally* Bone v. U.S. Food Serv.,

404 S.C. 67, 744 S.E.2d 552 (2013). In Bone, the Supreme Court analyzed what a “final judgment” was within the context of S.C. Code Ann. § 1-23-390. The present case does not involve review from a final judgment of either the circuit court or the court of appeals. As such, it is a matter of law as to whether the Decision & Order in the present case is subject to appeal. Respondents contend S.C. Code Ann. § 42-17-60 governs this appeal. A decision as to whether the instant appeal can or cannot be maintained should not be made summarily through an administrative motion, much less one that cites no legal authority. This issue apparently will be at the heart of Appellant’s appeal.

4. Alternatively, Appellant requests that if the Court were to determine that the July 22, 2013 Decision & Order is “an appealable order,” Appellant requests that the Court hold the appeal in “abeyance” until all issues in the matter are resolved by the Commission. Again, Appellant cites no legal authority for holding the appeal in “abeyance.” As such, in accordance with Rule 240(c), SCACR, Appellant’s Motion should be dismissed.
5. Pursuant to Rule 269, SCACR, Appellant should be sanctioned for failure to comply with Rule 240 (c), SCACR.

WHEREFORE, the Respondents respectfully request that due to Appellants’ failure to satisfy Rule 240 (c), SCACR, and for the reasons set forth herein, Appellant’s Motion should be DISMISSED. The Respondents further request that the Court enter an Order sanctioning Appellant and requiring Appellant to pay Respondents’ Attorneys’ fees associated with preparing this Return.

September 5, 2013
Greenville, South Carolina

ELLER TONNSEN BACH, LLC

By:  _____

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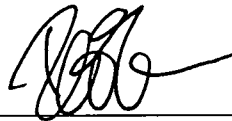
v.

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CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Return to Appellant's Motion to Hold the Appeal in Abeyance on the Appellant by depositing a copy of the same in the United States Mail, postage prepaid, on September 5, 2013, addressed to his attorney of record, as follows:

Joseph T. McElveen, Jr., Esq.
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