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**Jan 09 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
L. Casey Manning, Circuit Court Judge  
Joseph M. Strickland, Master-in Equity

Appellate Case No. 2021-000539  
Case No. 2020-CP-40-3674

Ammon L. "Treigh" Sullivan .....Respondent,

v.

Richland County School District One and  
South Carolina Department of Education, ..... Defendants,

Of which, South Carolina Department of Education, is.....Appellant.

**RESPONDENT'S RETURN TO MOTION FOR COSTS ON APPEAL**

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## INTRODUCTION

Appellant filed a motion for costs on appeal pursuant to Rule 222(d), SCACR on December 18, 2024. Appellant’s Motion follows the Court’s opinion on November 13, 2024, reversing and remanding the circuit court and master-in-equity’s entry of default against Appellant who undisputedly failed to respond in a timely manner to Respondent’s summons and complaint. Respondent opposes Appellant’s motion.

## STANDARD OF REVIEW

Rule 222(a), SCACR provides that “[w]hen judgment is reversed, costs shall be taken against the respondent unless the **court orders otherwise.**” (emphasis added). A party may make a motion for costs within 15 days of the issuance of the remittitur and must be accompanied “by a sworn itemized statement of costs incurred.” Rule 222(d), SCACR. A return may be filed to oppose the motion for costs or seek a reduction in the amount awarded. *Id.*

## ARGUMENT

- I. **This Court should deny Appellant’s motions for cost on appeal based on the inequity of awarding costs against Respondent at this time, the procedural posture of this case, and the novelty of the overall issue.**

This Court should deny Appellant’s motion for costs on appeal. Such an assessment against Respondent would not only be inequitable given the factual and procedural history of the case, but also possibly inappropriate at this time, given the novelty of this issue as noted by this Court in its Opinion. *Sullivan v. Richland Cnty. Sch. Dist. One*, 909 S.E.2d 406 (Ct. App. 2024).

The issue that has been remanded back to the trial court is to consider whether the Respondent has “establishe[d] his claim to relief by evidence satisfactory to the [c]ourt” to allow for a default judgment to be entered against Defendants in this case. Rule 55(e), SCRCF.

Respondent filed the cause of action against Appellant on August 3, 2020, and “it is undisputed that the Department [of Education] failed to timely respond to the summons and complaint” resulting in the entry of default by the circuit court and declination by the master-in-equity to set the entry aside. *Sullivan*, 909 S.E.2d at 407.

As noted by the South Carolina Supreme Court, “it is within this Court's discretion whether to award fees and costs under Rule 222.” *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (citing Rule 222, SCACR). On the federal level, the Fourth Circuit Court of Appeals has noted that costs are at the discretion of the awarding court and additional factors—such as “their excessiveness in a particular case, the limited value of the prevailing party’s victory, or the closeness and difficulty of the issues decided”—may justify denying an award of costs. *Cherry v. Champion Intern. Corp.*, 186 F.3d 442, 447 (4<sup>th</sup> Cir. 1999).

**a. Awarding costs against Respondent at this time would be inequitable.**

This Court should consider the inequity of awarding costs against Respondent at this time. Awarding costs would impose an undue financial burden on Respondent. Respondent has already endured significant financial and emotional hardship as a result of this litigation. As stated in his complaint, Respondent has dealt with years of being underpaid and has spent his career as an educator, which is unfortunately, a field not known for its high compensation rates. (Compl. ¶ 24-25). Having to subsume costs from this appeal would put Respondent into even deeper financial hardship than the damages he has already suffered. Additionally, it would be inequitable to saddle Respondent with costs and fees where: Respondent has contested this appeal in good faith; the South Carolina Department of Education undeniably failed to timely respond and was bailed out due to who they are (state governmental entity); and this was a novel issue in South Carolina. This

Court should consider all of these equitable factors in its discretionary power to award costs and fees at this time.

**b. Based on the unique procedural posture of the case and novelty of overall issue, this Court should exercise its discretion in not awarding costs against Respondent at this time.**

Even though this appeal has technically ended, the overall issue of the case—whether the Department of Education is actually in default within the meaning of Rule 55(e)—is still ongoing. This Court’s decision to reverse and remand the entry of default did not necessarily absolve Defendants of the default, but rather tasked the trial court with a more detailed finding based on this Court’s consideration of the scope of application of Rule 55(e). This Court recognized Rule 55(e)’s scope as a novel issue in South Carolina and because of its novelty—primarily federal law was relied upon from other appellate circuits to reach this Court’s decision. *Sullivan*, 909 S.E.2d at 407-408. South Carolina does not have strong case law regarding the issue and this case may be instrumental in filling that gap. This Court noted that both the circuit court and master-in-equity did not take sufficient evidence as to the merits of Respondent’s claim, and therefore, based on that failure, the default was reversed. Based on this Court’s remanding of the case back to the circuit court, default may be restored as to the Defendants following further consideration. To award costs now, would brush over the novelty of this case and the spirit of Rule 54(d), SCRPC which awards costs to the prevailing party on final judgment. Final judgment, based on the language used by this Court, has not been reached yet in this case.

### **CONCLUSION**

For the foregoing reasons, Respondent respectfully asks that this Court deny Appellant’s Motion for Costs. In the alternative, Respondent asks that this Court reduce the award of fees and stay taxation of such fees until the conclusion of this matter.

Respectfully Submitted,

**CROMER BABB & PORTER, LLC**

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the South Carolina Supreme Court’s Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended April 24, 2024), the undersigned employee of Cromer Babb & Porter, LLC, counsel for the Respondent, does hereby certify that service of the **Respondent’s Return to Appellant’s Motion for Costs on Appeal** in the above-captioned matter was made upon all counsel of record by e-mail only at the below email only this 9<sup>th</sup> day of January 2025:

Andrew F. Lindemann, Esquire  
Lindemann & Davis, P.A.  
Email: [andrew@ldlawsc.com](mailto:andrew@ldlawsc.com)

s/Julius W. Babb, IV



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SC Court of Appeals

Fearless Advocates. Fierce Challengers.

January 9, 2025

**Via Email Only**

Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: Ammon L. "Treigh" Sullivan v. South Carolina Department of Education  
Appellate Case No. 2021-000539

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules (as amended April 26, 2024), enclosed please find for filing the **Respondent's Return to Appellant's Motion for Costs on Appeal** and **Certificate of Service** regarding the above referenced appeal. By copy of this letter, I am serving copies on counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

Sincerely,

Julius W. "Jay" Babb, IV

Enc.

cc enc.:

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